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VOL. I, PART ONE

BRIEF FOR COMPLAINANT

In the Supreme Court of the United States

OCTOBER TERM, 1920.

~~No. 3~~, ORIGINAL.

THE STATE OF NEW MEXICO, COMPLAINANT,

vs.

THE STATE OF TEXAS.

IN EQUITY

FRANK W. CLANCY,
Counsel for Complainant.

The Clark Quick-Printing Co., 1332-34 Lawrence St., Denver, Colorado.

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ADDENDUM.

MEANINGS OF SPANISH WORDS.

Abrevadero, a watering place.
Acequia, an irrigation ditch.
Agua, water.
Alamo, a cottonwood tree.
Alamito, diminutive of alamo.
Amolar, to grind.
Amole, soapweed.
Ancon, an open road; a bay; on earth's surface, a place like a bay.
Arena, sand.
Artesa, trough.

Baile, a ball or dance.
Bordo, a bank, as of a ditch, a dyke.
Bravo and brava, wild.
Bruja, a witch.

Cachanilla, I cannot learn what this is, but the testimony indicates that it is some vegetable growth.
Calero, a lime-kiln.
Canaigre, a plant used for tanning.
Canutillo, a small tube or pipe.
Camino, a road.
Ceja, the brow of a hill or mountain.
Cerro, an isolated mountain or hill.
Chapo, of low stature.
Corral, an enclosure for animals.
Cuesta, steep hill.
Cuevas, caves.

Grama, a grass of superior quality.

Jacal, a hut or house made with upright poles.

Laguna, a lake.
Llano, a plain or prairie.
Loma, a hill.

Mansos, tame.
Mayordomo, an overseer or "boss".
Mesquite, a bush which has thorns and produces beans; an Aztec word.
Monte, a mount, but, usually, in New Mexico, woods or brush.

Nuevo, new.

Ollas de agua, water-holes.

Panocha, cone of dark sugar.
Paraje, a stopping place.
Parda, gray.
Paseno, belonging to Paso.
Pelillar, place where pelillo grows.
Pelillo, young grass.
Piloncillo, same as panocha.
Petaca, a trunk.
Playa, a sand bar or stretch of sand left by water, like a beach.
Piedra, a stone or rock.
Piedra de Amolar, a grinding stone.
Piedras Paradas, standing rocks.
Poleo, penny-royal.
Prieto, dark or black.

Remanso, whirlpool.
Rincon, an inside corner, but on earth's surface a piece of low ground entering into hills.

Salitre, ground where there is salt or alkali.
Sanguijuelas, leeches; bloodsuckers.
Sarzo, a frame.
Surumato, name given in contempt to a low class person of the Republic of Mexico.

Tapia, a family name; means mud wall.

Tornillo, a screw; in New Mexico, a tree of hard wood, like mesquite.

Toro, a bull.

Trosas, logs to be sawed into boards.

Tupido, dense, thick, opaque.

Uranga, a family name.

Uranguena, pertaining to Uranga.

Viejo, old.

In the Supreme Court of the United States

OCTOBER TERM, 1920.

STATE OF NEW MEXICO,

vs.

STATE OF TEXAS.

NO. 5, ORIGINAL.

BRIEF FOR COMPLAINANT.

PART I.

PRELIMINARY.

Although it may not be a matter of argument as to rights of complainant, yet I cannot refrain from calling attention to the predatory and unscrupulous character of the defendant in land matters. That a community may have a character, as a whole, apart from the individuals composing it, ought to be conceded, and I quote from a recent article, by Foster Watson, published in Littell's Living Age of November 8, 1919:

"Every human institution—political, social, and religious—is now the subject of critical analysis, and has to make good its claims. At present no problem is more vital than that of the relation of the individual to the nation, and the nation to other nations; and in considering the problem it is of the first importance to recognize that there is a psychology of the community. I know of no better description of the nature of the community than that given by the late Professor Josiah Royce of Harvard. He points out that since man is essentially a social being, he lives in the community, and depends upon the community for 'all that makes his civilization articulate'. It follows that the educational provision, whatever else it involves, at any rate must include an attempt toward the 'making articulate' of the civilization of the community in which the young mind is being developed. The sense of this necessity deepens when we follow Professor Royce's exposition further.

Each of the two, the community or the individual member of it, is as much a live creation as is the other. Not only does the community live, it has a mind of its own—a mind whose psychology is not the same as the psychology of an individual human being. The social mind displays its psychological traits in its characteristic products,—in languages, in customs, in religions,—products which an individual mind, or even a collection of such minds, when they are not somehow organized into a genuine community, cannot produce."

Regarding Texas, then, as a community, with a psychology, character or soul, of its own, let us briefly examine its record as a would-be land-grabber.

One of its earliest demonstrations was in December, 1836, as noted by this court at pages 38-9 of 162 U. S., the Republic of Texas at that time adopting an act declaring one of its boundaries to be from the mouth of the Rio Grande up the principal stream of the river to its source. This claim was without a shadow of foundation. From some time early in the seventeenth century, the kingdom, as it is called in many of the early records, or province, of New Mexico was a recognized civil and military subdivision of Mexico, with its seat of government at Santa Fe, which is about thirty miles east of the Rio Grande, and the governor exercised jurisdiction over a large extent of country east of that river. North of Santa Fe, important and well known towns, such as Santa Cruz, San Juan, Taos, Nambe, Chimayo, and others, all east of the Rio Grande, were subject to the control of the authorities at Santa Fe, while to the south, Bernalillo, Galisteo, the Indian town of Sandia, Albuquerque, Tome, and the whole country as far as El Paso, east of the river, belonged to the same jurisdiction. Albuquerque, east of the river, was founded in 1706, and settled largely by people induced by the then governor, to leave their homes at Bernalillo, also east of the river, where they had lived for years. The first civil settlement in Texas, according to the Encyclopedia Americana, was in 1730, more than a hundred years after the beginning of Santa Fe as the capital of New Mexico.

Yet, the effrontery of Texas in making this preposterous claim, was rewarded by the payment of ten million dollars from the United States, as will be seen by reference to the act of Congress of September 30, 1850, which established the Territory of New Mexico, the propositions therein contained, being accepted by Texas in November of the same year. The records of this court and of Congress, in the matter of land grants, bear evi-

dence of the undisputed exercise of authority by the officials at Santa Fe over immense areas far east of the Rio Grande, down to the time of the American occupation of the country, that is, undisputed except by this shadowy claim of Texas, which did, indeed, in 1841, send an armed expedition into New Mexico to take possession of the country. That that was the object of the expedition has been denied by partisans of Texas who said it was no more than an innocent trading expedition of a commercial character. A celebrated book, "Kendall's Expedition", sets out the Texas side of this. The expedition was ignominiously captured by Mexicans, Kendall says through treachery of some of its own members, at a place for east of Santa Fe, and the prisoners were taken to Mexico, suffering great hardships on the road.

Next, attention should be called to the "Greer County" controversy, to settle which the United States was compelled to institute a suit in this court against Texas. This case appears twice in the reports of this court, first in 143 U. S. 621 and later in 162 U. S. 1. In the first report the only question decided was as to the jurisdiction, but in the other report the merits were considered, and as a final result, Texas was deprived of the land it had unjustly claimed, amounting to more than a million and a half acres.

The claims of Texas to land in the vicinity of El Paso have involved our government in a prolonged diplomatic controversy with Mexico as to the merits of which I am unable to speak, but I have been told by one for whose judgment I have great respect, that Mexico has rather the best of the contention.

Then we come to the present case as to which New Mexico hopes to convince the court that the Texas claims, which, in places, put the river on rocky bluffs or sand hills, far above any possible bed of the river, are no better founded than its claim of the Rio Grande as a boundary from its mouth to its source.

STATEMENT OF THE CASE.

The issue presented for consideration is the location of the Rio Grande in 1850 between the 32nd parallel of north latitude and the point on that river at the parallel of 31 degrees and 47 minutes, established as a part of the international boundary between Mexico and the United States, from which the boundary line runs west, that line being established by Article I of the Gadsden treaty made in December, 1853.

By Article V of the treaty of Guadalupe Hidalgo, the boundary line between the two republics was established to begin in the Gulf of Mexico three leagues from land opposite the mouth of the Rio Grande and to run thence up the middle of that river to the southern boundary of New Mexico, north of the town called Paso, and thence westwardly along that southern boundary to its termination. That treaty provided for the appointment by each government of a commissioner and surveyor who should meet at San Diego and run and mark the boundary in its whole course. The commissioner on the part of the United States, without the concurrence of the surveyor, who was at the time absent, agreed with the representatives of Mexico, that the point on the Rio Grande at which the line should turn west, was opposite or near to the town of Dona Ana which is on the east side of the river. The surveyor, Mr. A. B. Gray, when he appeared, refused to become a party to that location, which he demonstrated to be incorrect, and carried the controversy to Washington, and the Gadsden treaty was the result by which the point in the river where the line should turn to the west, was established at the parallel of 31 degrees and 47 minutes of north latitude, thus leaving the country on the west side of the river, north of that parallel, in the United States, and in New Mexico when taken in connection with the provisions of the act

creating the Territory of New Mexico, next to be considered, while the country north of that parallel on the east side of the river up to the 32nd parallel became clearly a part of Texas.

By the act of Congress of September 9, 1850, which established the Territory of New Mexico, the national government made certain propositions to the State of Texas "which when agreed to by the said State, in an act passed by the general assembly" should "be binding and obligatory upon the United States and upon the said State of Texas", provided that the agreement by Texas should be given on or before December 1, 1850, the first of which propositions was as follows:

> "First. The State of Texas will agree that her boundary on the north shall commence at the point at which the meridian of one hundred degrees west from Greenwich is intersected by the parallel of thirty-six degrees, thirty minutes north latitude, and shall run from said point due west to the meridian of one hundred and three degrees west from Greenwich; thence her boundary shall run due south to the thirty-second degree of north latitude; thence on the said parallel of thirty-two degrees of north latitude to the Rio Bravo del Norte, and thence with the channel of said river to the Gulf of Mexico."

By the fifth proposition, Congress offered Texas ten million dollars to induce her to accept the propositions. Texas accepted the propositions in the manner prescribed in November, 1850.

The second section of said act of Congress shows that the southern line of New Mexico should begin in the Colorado river where the boundary with Mexico crossed the same and should run thence along said boundary to the Rio Grande and thence follow the main channel of the river to the 32nd degree of north latitude.

The dispute to settle which this suit was brought is as to the rights of the respective States to a considerable area of valuable land claimed by each, and the settlement of the dispute depends upon where the main channel of the Rio Grande was in 1850 between the parallel of 31 degrees 47 minutes of north latitude and the parallel of 32 degrees of north latitude.

The pleadings in the case clearly define this to be the issue, but simple though the question may seem, it is complicated with a variety of matters which have occasioned the taking of a large amount of testimony, much of which, presented by the defendant, it is believed will by the court be found immaterial and irrelevant and only tending to obscurity and confusion.

Counsel for plaintiff would gladly relieve the court of the burden of reading this great mass of testimony, or the greater part of it, and will do what is possible in that direction, although it is feared that there will still remain much which the court will feel constrained to examine with care in addition to what can be herein presented.

The foregoing statements, with the exception of the one concerning the attempted location of the international boundary, under the treaty of Guadalupe Hidalgo, near the town of Dona Ana, and the action of A. B. Gray relative thereto, are set out in the bill of complaint and are admitted by defendant's answer so that it is clear that, as stated at the beginning, the material question is the correct location of the main channel of the Rio Grande in 1850, between the parallels of 31 degrees 47 minutes and of 32 degrees of north latitude, as that channel is the boundary between New Mexico and Texas, as stated in the answer as well as in the bill of complaint, and its location will be decisive of this case.

There are, however, some other things in the bill of complaint which should be here stated. The bill sets up that a correct delineation of said boundary line between said parallels is shown on a map thereto attached and made a part thereof, and this is denied by the answer. The bill also sets out as an exhibit which appears at page 10 of the printed record, the first article of the proposed Constitution of New Mexico which specified the boundaries of the contemplated state. It will be seen that the eastern boundary was to be the 103rd meridian of longitude west from Greenwich, from the 37th to the 32nd parallel of north latitude, which is substantially the same as the boundary proposed to Texas by the act of Congress of September 9, 1850, and accepted by Texas in November, 1850; but Texas, running true to form, and in harmony with her individual psychology as indicated in the "Preliminary" part of this brief, and in violation of her contract of 1850, before the said Constitution was accepted by Congress, with her solid phalanx of 18 representatives and 2 senators, all harmonious members of one political party and cooperating for the benefit of their great state, secured the passage of a joint resolution which will be found at pages 10 to 12 of the printed record as an exhibit to the bill of complaint. That resolution in effect provided that any provision of the state Constitution which tended to change the line between Texas and New Mexico should be of no effect (which is beyond criticism) but should be construed so as not to change the lines known as the Clark lines, run and marked by Clark as a commissioner on the part of the United States. Now it was a notorious fact that by some error, the explanation of which I have never learned, the Clark line intended to be on the 103rd meridian was in fact at a considerable distance west of that meridian, and the object of said joint resolution was to secure to Texas a strip of territory, which under the compact of 1850 did not rightfully belong to her.

That resolution further provided that the President, in conjunction with Texas, was authorized to reestablish and re-mark the boundary lines established by John H. Clark in 1859 and 1860, and for that purpose to appoint a commissioner to act with a commissioner to be appointed by Texas to re-mark the line run by Clark for the 103rd degree of longitude southwardly to the 32nd parallel of north latitude, and thence west with that parallel as determined by Clark, to the Rio Grande. The bill of complaint calls attention to the fact that this joint resolution has no effect upon that portion of the boundary in dispute in this case, between the 32nd parallel and the parallel of 31 degrees and 47 minutes; but it alleges that the initial point of the Clark survey, which was at a monument marked as No. 1 on the 32nd parallel near the Rio Grande, has been reestablished by the commission authorized by the joint resolution, at a point more than 3,000 feet west of the real location of Clark's monument No. 1 as established and marked by him. This is denied by the answer and the correctness of the action of the commission affirmed.

The bill then alleges that Texas has attempted to assume jurisdiction over land lying west of the channel of the Rio Grande as it existed in 1850, which is also denied by the answer.

The answer in addition to what has been hereinbefore stated, asserts the correctness of the re-location by the commission authorized by the joint resolution of Congress, of Clark's monument No. 1, and alleges that such re-location is placed on the 32nd parallel 600 feet east of the point at which the parallel intersected the river. It further alleges that the report of the commission, consisting of an original and supplemental report, "was duly made in conformance with said joint resolution", although the resolution did not require the making of any report,

"and was duly submitted" to the President and was by him approved. The answer further says that the line along the 32nd parallel as established by said commission by virtue of the approval thereof by the President, is the correct boundary between plaintiff and defendant so far as the line along the 32nd parallel is concerned, and that New Mexico is bound by the re-survey of the Clark line as made by said commission and by the location of the Clark monument No. 1, and cannot now dispute the same because it was admitted into the Union subject to the terms and conditions of the joint resolution of Congress under which the "re-survey and re-location of the boundary line was (*sic*) made".

That does not appear to be a pleading of any issuable fact, although it is denied by the answer to the cross bill, but is the assertion of a mere conclusion of law, and an incorrect conclusion at that because, while it is true that the admission of the state was "subject to the terms and conditions" of the joint resolution, those "terms and conditions" do not go beyond a validation of the Clark lines, and do not extend to an assertion of the correctness of the work of the commission to be created under that resolution, which was not reported until April 5, 1912, and so far as the re-location of the Clark monument No. 1 is concerned—a matter of real importance—appears not to have been reported until February 20, 1913, (see pages 21-2-3 of the record) more than a year after New Mexico became a state, while the approval of the work of the commission by the President was still later.

Plaintiff's claim is that it has clearly demonstrated by testimony the inaccurate and worthless character of the work of that joint commission, and its failure to do what was required by the terms of the joint resolution; and there is no conceivable line of sound argument to

support the absurd position that Congress admitted New Mexico into the Union subject to boundaries in part to be fixed by a commission, the results of the work of which could not have been known when Congress acted in February, 1911, the attempted re-location of the Clark monument No. 1 not having been made until after September 26, 1911, and not reported, as heretofore shown until February 20, 1913. New Mexico became a state and organized its government on January 6, 1912.

The failure of the commission, demonstrated by testimony, to do that which the resolution of Congress required, leaves us, if the resolution is valid, merely in the position of being bound by a Congressional validation of the Clark lines, and the Clark line on the 32nd parallel as established by him, plaintiff asserts is in perfect harmony with its claim as to the location of the Rio Grande on that parallel, while the attempted re-location by the commission of that line on the parallel, in several particulars departs from the original, and appears plainly to have been made without any reference whatever to those things which Clark declared to be of the utmost importance to the future re-location of the stations and monuments of his survey by means of bearings on permanent and immovable mountain peaks, and the engineers employed by the complainant were able by the means indicated by Clark, unmistakably to re-locate and identify all of his stations material to the present case, of his work relating to the 32nd parallel.

The respective claims of the complainant and defendant, can be well seen by an examination of the maps filed with the bill of complaint and with the answer.

The map with the bill of complaint shows the line of the railroad which runs from north to south, and bearing in mind that that railroad as is shown by the testimony, runs close to the foothills on the east side of

the valley, it will be seen that New Mexico locates the river near the east side of the valley, while the map with the answer locates the river at the western edge of the valley, and so far to the west that in places, as testimony shows, it would be up on the dry sand hills which run along that side of the valley. The map presented by the complainant was made by Charles L. Post, an engineer and surveyor who appears in the record as a witness and his location of the river which is the vital thing in the case, was based upon information obtained from a large number of old men who went over the ground with him at different times and pointed out the bed of the river as they knew it early in life. Of these old men 46 testified in the case, all of whom but one, were of the Spanish race or were Indians, the one exception being Colonel Eugene Van Patten who came to the country in 1857, and was familiar with it from that time on. Those who were Indians, were of the civilized race commonly called Pueblo Indians.

These old men, varying in age from 62 to 96 years, testified with substantial uniformity that the river as they first knew it, ran near the hills on the eastern side of the valley and that they could still trace the course of the main channel near those hills, and that they had been over the ground with the surveyors and had shown them where the river ran when they first knew it. They were nearly all men of no education in the sense of school learning, some of them ill and suffering and infirm, and were subjected to merciless and confusing cross examination, to some of which the attention of the court will be hereinafter particularly called. Under the order of this court, the persons who took the testimony were mere examiners without authority to rule upon the admissibility of evidence and were compelled to receive and take down whatever counsel saw fit to offer.

Notwithstanding the cross examination of the kind above stated, these old men, unaccustomed to courts, timid and naturally embarrassed and at times confused, were not, on the whole, shaken in the testimony which they gave, and even on paper in cold print, convey to any impartial mind the fact that they were honestly telling what they believed to be true to the best of their memory. An interesting corroboration, by the records of the work of John H. Clark so far as it has been preserved, of the correctness of their statements, is to be found in the fact that up to the time of making his survey upon which his map was founded, Mr. Post had no knowledge of Clark's work, and had seen no record of it; and yet when he later saw that record he found a statement by Clark that his initial monument No. 1, on the 32nd parallel, was 600 feet from the Rio Grande, and when he found and re-established that monument No. 1, which, however, is disputed, it was approximately 600 feet from the river as located for him by the old men who showed it to him. This will more clearly hereinafter appear.

It is worthy of note at this time, that the defendant never presented any witness to testify from personal knowledge to any different early location of the river, and it is to be assumed that no such witness could be had, but it is *not* to be assumed that complainant exhausted the supply of octogenarians who were acquainted with the river. Defendant's counsel evidently preferred to rely upon efforts to confuse complainant's witnesses by cross examination of the kind already described, and upon some old, confused and demonstrably inaccurate and unreliable records of so-called surveys, many of which bear on their face unmistakable signs of being made in the office and not based upon work in the field.

In addition to what is set up in the answer, which clearly enough, taken with the bill of complaint, shows

what is in dispute, the defendant submitted what is called a "Cross Bill", the necessity for which is not obvious, which, after adopting the allegations of fact contained in the answer, prays that the court decree that the boundary line between Texas and New Mexico "or that part of the same between parallels 31° 47′ and 32° north latitude, be declared to be the middle of the channel of the Rio Grande as it actually existed in the year 1850, and as the same is shown upon the map attached" thereto "or said boundary line as between said parallels, be decreed to exist in the middle channel of the Rio Grande as same actually existed in the year 1850 or as found by the joint commission of the United States of America and the Republic of Mexico as located, platted and delineated by said joint commission in the years 1852 and 1853".

It seems proper at this point to say that no testimony has been presented to show that the middle or main channel of the Rio Grande between the parallels aforesaid was "located, platted and delineated" by any commission in 1852 and 1853, or at any other time, although there is in the record enough to justify a belief that the river above El Paso, including the portion material to the present case, was actually surveyed by one Radziminski in the employ of the United States members of that commission, but there is no record of the adoption or approval of that survey, nor can any record of the survey itself now be found, although search for it has been made in all places where it ought to, or might, be found as will hereinafter be shown.

Before entering upon an attempt to state in some detail the direct evidence by which complainant establishes its position as to the correct location of the Rio Grande, the attention of the court is invited to the map submitted as Exhibit C with the bill of complaint and especially to the names and relative locations of various places and objects thereon, which are continually mentioned and re-

ferred to in the testimony of many witnesses. Of these the most important are, on the east side of the river, beginning at the north:

Alamitos or the Alamitos Stage Station;

Clark's Monument No. 1 as correctly located and as located by the commission in 1912 on the 32nd parallel which runs through a town called "Anthony" on the New Mexico side of the line, and "La Tuna" on the Texas side;

Tres Alamos which means Three Cottonwoods;

Calero de Gualdarama or the Lime Kiln of Gualdarama;

La Bruja;

Vinton, a new town where there are brickyards;

Bend, known as La Uranguena;

Bosque de Artesa, which, however, is on the west side;

Estero Redondo de las Sanguijuelas;

New Canutillo, a modern town;

Tapa de las Nutrias or Beaver Dam;

House of Doroteo Salado, at a place frequently mentioned as old Canutillo or Canutillo Viejo;

Duraznito;

Angela Hale Ranch, also mentioned as the Ranch of Chapo Reyes who was Angela's father;

White's Spur;

Old Lime Kiln;

White's old Ranch House;

Vado de Muleros;

Piedra de Amolar;

Courchesne Bridge.

At the Piedra de Amolar near the Courchesne Bridge, the river enters a canon which extends nearly to the city of El Paso, and which was impassable in early days so

that the road, as indicated on the map, at that point left the river and went into the hills, coming back to the river where the canon opens out above the present city. A railroad and wagon road now run through the canon near the level of the river.

On the west side of the river, beginning at the south, the important points are:

The International Boundary Monument;
Road to Canoncitos;
Ancon de Borrego;
Piedras Paradas;
Santa Teresa;
Corral de Tapia;
Yerba del Manso;
Alamo Naranjo;
Rancho de Juan de Dios Sais;
Camino Paseno, or El Paso Road.
Alto de los Cuarones;
Corral de Trosas;
La Cobrena;
Bosque del Gato;
Loma de Arena;
Arroyo de la Artesa;
La Union;
La Isla de Jose Maria Garcia;
Old Town of Amoles.

It is to be noted that the old men called to testify from personal knowledge as to the location of the river in the early fifties, were generally more familiar with the east side of the river than with the west side. Indeed, some of them knew nothing at all about the places on the west side. This is to be accounted for by the fact that travel seems to have been principally on the east side. In the early days, Fort Fillmore and Las Cruces, on the east side of the river were places of some import-

ance to and from which there was considerable travel, while on the west side the town of Amoles and Mesilla, which is near Las Cruces, were about all there was and they do not seem to have been then of much importance, and were in Mexico until 1854, when the Gadsden treaty became effective.

The testimony also shows that from the time of the earliest memory of the old witnesses, up to 1864, there had been no permanent change in the location of the channel of the river near the east side of the valley, and that while there were at times great floods which extended over the valley, or the greater part of the valley, yet when the high water subsided the river returned to its regular channel as they re-located it for the surveyors; but in 1864, there was a flood greater than ever known before or since which so changed the course of the river as to put the towns of Mesilla and Las Cruces—the principal places of that region, which are far to the north of the disputed area, on the east side of the river although prior to that time the river ran between the two towns. Up to 1854, when the Gadsden treaty became effective, Mesilla, on the west side of the river, was in Mexico. In 1864 the high water not only changed the channel of the river near Mesilla and Las Cruces, which places are quite near together, but formed a new channel to the south, on the west side of the valley, entirely destroying the old town of Amoles, and driving the people of that place to a new location on higher ground, called La Union. Since that time the river has shown a tendency to get back to the east side, and at places south of Tres Alamos, especially at and below New Canutillo, is now running very near where it did in the earlier days, although for a time after the great flood, it appears to have been running far west of its present location, near the Loma de Arena, the Corral de Trosas, the Alto de los Cuarones, the Corral de Tapia, Santa Teresa, and the Piedras Paradas.

Attention should be called to the fact that the testimony of the old men, Mexicans and Indians, was given through interpreters, which accounts for many obvious errors and misunderstandings between witnesses and counsel, which at times make the testimony unintelligible and inconsistent or self-contradictory. This should be borne in mind continually in considering the effect of the testimony. Particular attention will be called to some of the instances of this kind, but this cannot be done in every case.

Before the building of the Atchison, Topeka & Santa Fe Railroad in the early eighties of the 19th century, through the canon above El Paso, six or eight miles long, that canon was impassable for travelers, and in journeying to the upper country, there were two roads in use, one of which went up the river on the west side, through the mountain called Muleros, and went by a place in the mountain called the Canoncitos, and came down to the open country near the Piedras Paradas, whence the travelers sometimes went east and crossed the river near White's Ranch, and there took the other road on the east side of the river, or went north on what was called the Camino Paseno, or the road of El Paso, which went through, or close to, the town of Amoles and on to Mesilla, which prior to 1864 was on the west side of the river, and not far from Las Cruces, the river then being between the two towns.

The other road was on the east side of the river, turning from the river above El Paso to the right into the hills, near a place where there is now a smelter, and coming to the river again above the head of the canon near the Piedra de Amolar, some distance below White's Ranch. This road appears to have been more difficult for travelers than the other even when they were going up on the eastern side of the river although it must have been shorter.

From White's Ranch, or Frontera, the road ran generally over the hills above the level of the river, the lower ground being impassable on account of the proximity of the river, except that in dry times, there were places where it was possible to descend and go across what are called in Spanish *rincones,* thus lessening the distance, and then going again up on the hills. I do not know that there is any single word in English which is the equivalent of rincones as applied to such places on the earth's surface. The interpreters when they attempted to translate the word, called it "corners", which while literally correct by the dictionaries, is misleading. A rincon is an inside corner, as in a room, while *esquina* is an outside corner, as the exterior corner of a building. Complainant's exhibits 36 to 39, at page 3122, of the record, are photographs which show what is meant by a rincon in the sense here used. A rincon is a stretch of lower ground running back into the hills, and the rincones here referred to were stretches of such ground which would be impassable when wet, at times of high water, but could be crossed when dry. The general course of the road, however, was on the hills from White's Ranch up to a point near where the town of Anthony now is, not far below Alamitos, where it came down to lower ground before it reached that camping place.

The reproduction of photographs in the printed record is not, in some instances entirely satisfactory, and where they are not plain and distinct, it is to be hoped that the court will refer to the originals in the record certified by the examiners.

I will now attempt, as briefly as practicable, to state the substance of the oral testimony appearing in the record, as to the location of the river, which was presented by complainant. First we have the testimony of

FELIPE MADRID

which begins on page 41. This witness was born in Paso del Norte, now called Juarez, which is on the south or west side of the Rio Grande, opposite the present city of El Paso, Texas, where he lived until December 12, 1850, when he went to Mesilla, and in 1851 or 1852 he went to Santo Tomas, which is north of the disputed area, where he lived until 1864, when the river put the people out of Santo Tomas, and he then went to Las Cruces to live and has lived there ever since. He remembers the Mexican War and was 12 or 13 years old at that time. It will be seen that December 12 was a date easily fixed in memory, as that was the day of the great annual *fiesta* at Paso del Norte. The witness knew the Piedras Paradas, and in 1850 when he went to Santo Tomas, he went by the road through the Canoncitos, and came by the Piedras Paradas (p. 47) where there was then no river, the river being far to the east, several thousand varas distant, but "in 1864 the river went there", that is at the Piedras Paradas.

On his way up the river, the party slept at Alamitos (p. 46) which many witnesses state to have been a well known stopping place where there were trees for shelter, and water close by in the river. He testifies that Alamitos was near the present town of Anthony, (p. 42) that later there was a stage station there and that the river was near the hills. By the testimony of Col. Van Patten it appears that the stage line was established in 1857 and that there was a station at Alamitos. The witness says the river was very near the stage station, that he visited the place every time he came to El Paso to the fiesta; and had recently revisited Alamitos and identified the place, and that there are now to be seen the banks of the old river-bed (pp. 43-4) and that the road ran on the hills because the river did not permit it to go below; that the road was on the east side of the river and there

was only one road east of the river. He had heard of the bend called Uranguena, but did not seem to know where it was. He says he knew the Estero de las Sanguijuelas on the east side of the river, which was not a very large nor a very small Estero, and was near the river, and would overflow into the river when it rained (p. 45). He also knows the place now called Canutillo Nuevo, and at that place where the bridge is now, was the bank of the river when he first knew it. He knew of the beaver dam below Canutillo Nuevo, below which the river ran in two branches (pp. 45-6). When he first knew the river, he knew the place called Canutillo Viejo where lived a man named Doroteo Salado, who was a peon of his brother-in-law (p. 46). Salado's house was very near to the river. He knew the place called Duraznito, below Canutillo Viejo, and says that from Canutillo Nuevo to Duraznito the general course of the river was near to the hills. He knew White's Ranch which was near the river, and "more or less" 100 or 125 yards from it. Estimates of distance by witnesses of this kind, many of whom declared they knew nothing about yards or varas or miles, are uncertain and unreliable. Others place White's Ranch much closer to the river. He had recently gone on the ground with Eugene Van Patten and a surveyor to show where the river ran when he first knew it. From the time he went to Santo Tomas in 1850 until the flood of 1864 which drove the people out of Santo Tomas, there was no change in the course of the river. In the early years he knew of people rafting logs down the river, in August, to use in fires under copper kettles to make aguardiente and wines and syrups, the first crop of muscatel grapes, coming in August, and in September, the black grapes (p. 48). At White's house and at the Vado de Muleros, down to the canon the river ran near the hills, and at that time there was no road through the canon.

On cross examination, at pages 49 to 51, the witness and counsel were clearly talking at cross-purposes, about the roads and journeyings between Santo Tomas and El Paso as is apparent when we bear in mind the relative locations of the Muleros Mountain, the Canoncitos, the Piedras Paradas, White's house and Amoles. Under cross examination, he evidently became confused, saying that he was 22 years old in 1854, and 13 years old in 1856 (p. 52) and he was soon reduced to a condition of apparent imbecility, answering many questions "I do not remember", when they related to matters of which he must have known (pp. 53 to 57). He was led to say he was 12 or 13 years at the time of the Civil War, but that he was married in 1860, evidently confusing the Civil War with the war with Mexico. Then he relapsed into the "do not remember" condition, with only occasional gleams of intelligence. The cause of this, in part, at least, appeared the next day at pages 62 and 63, when in response to questions about his physical condition he said that he was a very sick man, and had been for years, suffering at times great pain which deprived him of memory, and that he had not spoken of it the day before because, from the nature of his ailment, he was ashamed to do so. A protracted further cross examination elicited nothing of great value, but at pages 73-4 is an illustration of the errors of literal interpretation.

I quote from the record where he was telling about showing the old river to Van Patten and a surveyor:

"Q. 617. You went along the route of this river and they said nothing to you about where the river was in 1850?

A. Yes, they told me where it was.

Q. 618. They told you where the river was?

A. Yes, sir.

Q. 619. Which one told you where the river was in 1850?

A. I don't remember.

Q. 620. Did Mr. Van Patten tell you at what points—at certain points—where the river ran in 1850?

A. Yes, sir, he told me.

Q. 621. And did he not say that you must say it was there in 1850?

A. No, sir. He knows where this river flowed then, and so do I."

The answer to question 617, undoubtedly was in Spanish. "Si, me dijeron endonde estaba el rio," which the interpreter translated literally, but, correctly translated it means "Yes, they said to me, where was the river?" The error of the interpreter, and the different meaning thereby given, would, naturally, escape the attention of counsel who had even a moderate knowledge of Spanish, and as it appears in the record, it conveys the erroneous idea that some one had told the witness where the river had been, instead of his giving the information.

It was shown definitely on re-direct examination that he was acquainted with Doroteo Salado and his house and that there was a spring 10 or 12 yards from the house (p. 79); that White lived at White's Ranch when he first knew the place, as he was told, although he did not know White; that he once saw a small monument near White's house, but never knew what it was for (p. 79); that he had not been at Amoles before the flood of 1864 but had seen it as he had passed by on the road from Piedras Paradas (pp. 79-80). Counsel took him over a part of the ground he had traversed with the surveyor, showing where the old river had been, and he stated that where the bridge is at Canutillo Nuevo, was the river bank of 1850 (p. 80); that they crossed to the west side of the river on the new bridge at Canutillo Nuevo and went to Las Tapias, thence to the Piedras Paradas and to the sand hill on the road of the Canoncitos and then "crossed to this side of the house of White" (p. 81)

and went up to Canutillo Nuevo, stopping at the place of Doroteo Salado, near the present railroad, and at Duraznito near the railroad, showing part of the river-bed between White's Ranch and Duraznito and all of the river-bed from Duraznito to Canuto Nuevo. Attention is invited to Question 759, and the Answer thereto on page 82, which show the correctness of the statement hereinbefore made as to what appears on pages 72-73. By this question he was asked whether he informed the surveyor where the river was or did the surveyor inform him where it was, and his answer was "I informed him".

On re-cross examination (p.. 83 to 86) he only strengthened his previous testimony as to the location of the old river-bed, as to his showing that river-bed to surveyors, and as to present indications thereof from White's Ranch up to Canutillo Nuevo.

Next we come to the testimony of

MARIANO COLMENERO

which begins at page 87.

This witness is of the race of Indians who live at Isleta some miles below El Paso in Texas. These are village Indians, commonly called Pueblo Indians and must not be confused with the *Indios Bravos* as they are called in Spanish, or Wild Indians, such as the Navajoes, Apaches, Comanches, Cayugas, and others. Something of their character and status may be gathered from the learned and instructive opinions in 1 N. M. in the cases of U. S. vs. Lucero, p. 422 and U. S. vs. Santistevan, p. 583.

This witness was one of the most interesting of those whose testimony appears in the record, and shows him to be a man of superior character, although entirely without any school education, and never was there a man possessed of stronger pride of race, and in his testimony

at several places there are some indications of his contempt for the wild Indians and for his Mexican neighbors. The Pueblo Indians are skilled in making pottery—a fact of such a character that the court may well take judicial notice of it—and this accounts for some of the testimony of this witness on page 87. He says he is acqtainted with the country from El Paso to Las Cruces and was seven or eight years old when he first became acquainted with it, when his father took him to drive the oxen and to herd them when turned loose, on their trips up the river as far as Chamberino, far north of the area in dispute, which they made every year in October to buy corn with their earthenware. He remembers hearing of the raising of the flag at Mesilla, but was not present. He says he was then quite large and must have been 10 or 12 years old. It is a historical fact that the raising of the flag of the United States at Mesilla, after the Gadsden treaty made that place a part of the United States, was in 1854, and other witnesses approximate the date of that occurrence. On page 90, he says he is 68 years old, so that he must have been born about 1845, which would make him 9 or 10 years old in 1854 when the flag was raised at Mesilla. He says that the present town of Anthony is below where the stage station was at Alamitos; that the road on the east side of the river at times came down to the bank of the river and sometimes went up on the hills; that it went up on the hills because the river flowed very near. He knew a man named Gualdamara, who would come out to the road when they went by to buy pottery; and that the river was near that house which was on the top of the hill, and the road was on the east side of the house. He says that he knew the place called La Bruja, and that all the place, above and below the house of Gualdamara, was called La Bruja, when he first went through there, but Gualdamara came there afterwards. He says that he does not know the names of places on the railroad,

but he did see the place recently where there are brick yards, and that the river flowed, when he was a boy, right where the brick yards are, which were placed there only recently. He says when he was a boy, he was acquainted with the place called Uranguena, which was so called because it was the property of Jose Maria Uranga, who lived in Paso del Norte, but he could not now identify the place where the ranch was. He was acquainted with the Estero de las Sanguijuelas near the river, and it was so called because there were leeches there. He knew the place called Bosque de la Artesa. When he first knew the river at the place now called New Canutillo, it ran a little more over that way than it is now, and the river came down a little over from where the bridge is now at Canutillo Nuevo, and then would turn around over to Canutillo Viejo, and that it was near the Ladera, on the side of the river towards the sunrise. It should be said that in New Mexico, the word *Ladera* is used to mean a slope or rise of ground. He did not know the place where the beaver dam was, although he heard that there was such a thing. He knew the place called Old Canutillo and when he first went up the river, there was nobody lived there, but afterwards Doroteo Salado lived there, and his house was very near to the river. He knew the place called Duraznito, but does not know why it was so called, and there was a spring there, near the river, and when he first knew it nobody lived there, but afterwards old man Salado lived there. He knew the place called White's Ranch, and knew White himself. The river was near White's house, about 150 varas from the house. Estimates of distance by these witnesses are very unreliable. The road passed White's house between the house and the river, and the house was higher than the river. The road, after passing White's house, went up on the hills, because the river came close to the hills, and at times, it would go above on the hills, and then at times, it would come

down, and then go right up on the hills again. At Duraznito, the river came next to the hills and down to White's Ranch. It was not far from the house. He remembers seeing a monument near White's Ranch, which he thought was a monument to somebody's grave, and he put stones near the monument, which his father told him was the line of New Mexico. The putting of stones near the monument was in accordance with a New Mexican custom, by which passers-by would add stones to mounds put up to mark the place where someone had been killed or had been buried. This monument was quite near the house. Two or three months before, he had been along the river with Mr. Post, the surveyor, to show him where he knew the river to be when he was a boy. He then identifies a picture as a photograph of Piedras Paradas on the other side of the river. It is stated in the text at page 95, that this photograph was marked Complainant's Exhibit 2, but it appears in the record at page 3095, as Exhibit 1, by some error, while the photograph which was offered as Exhibit 1 appears at the same place in the record as Exhibit 2. He says it has been many years that he had not visited the place where the Piedras Paradas are, but when he first knew that place there was no river running by those rocks, but afterwards it did run through there, and he does not know when it changed and ran through there. He says that Doroteo Salado lived at Old Canutillo, and later at Duraznito, where there was a spring near his house, but there was no spring at his house at Old Canutillo where there was a large estero or swamp.

On cross examination, he says that that swamp was large and round, and was made by the river, and was near the hills, and a part of the river bottom. At that place the river made a bend, but not a very big bend, and at times would come next to the hills, and at times go over the other way, and was always giving turns and

crooked, and where it flowed more straight was from White's house where it would hit the bank, this way, and from Duraznito would turn to where the sun sets, and then came back this way, but he could not tell how many varas or how many yards it went towards the sunset before it turned back, and in the early years, the river was very large, and each year there was a big overflow which would cover all of the bottom of the river, and, where it was deep, it would show, and would go through everything and cut down the banks and make a new river-bed at many places. He was young when he first went up the river, and from the time he was seven or eight years old, his father took him to take care of the oxen, and all of the time every year, they went up in October; and the second year he went up, there was a big flood which was why they went by Senecu', which is below El Paso, and went on the other side of the Piedras Paradas and the old Amoles road. When he went to show the river, he went with the surveyor and others including Don Eugenio Van Patten, whom he had known for many years, and being asked what Van Patten had to do with the Indians, he said, "In the first time that I knew him, he was married to an Indian young girl from El Paso". He says that Van Patten was always a friend of the Indians, the same as Mr. Flores, referring to the interpreter there present, who was acting as interpreter for the defendant. He says it is the custom of the Indians to be pleasant and friendly to each other and to help those who help them, but Van Patten did not help them because they lived in Isleta, but he helped those who lived at Las Cruces. He has heard that Van Patten lived there among the Indians and helped them with their business and the building of the church, etc. He says that when he went with Van Patten and the engineer to look over the river, his compadre, Manuel Ortega, went along and that they were born and raised together in the Pueblo of Isleta, but Manuel was a little older than he,

but he is a little older than Benigno Alderete, while Manuel Ortega is older than both of them—some years older—and both Benigno and Manuel have always lived at Isleta. Jesus Olguin did not go with him to see the river, but he was told that Jesus Olguin went and also his compadre Calistro Tarin, who was also born and raised at Isleta, and he believes he is a little older than Calistro. On page 102, the record seems to indicate some misunderstanding between counsel and witness, probably due to imperfect interpretations, but he finally says that it had been thirty years or more that he had not seen White's Ranch, because he did not travel the road by White's house after the road of Los Alamitos was opened —a road which he himself had opened. The examination at this point is not very clear about the road, but it elsewhere appears from the evidence that there is a range of mountains running north and south, which comes down quite close to the present city of El Paso, and that the road which he talks about went north on the east side of the mountains and through the Pass called Puerto de Alamitos, which is nearly east of the present town of Anthony, and came down to the place called Alamitos. By this road it was possible to avoid the rough, hilly road which left the river a little above the present city of El Paso and went over the hills, coming down to the river again near where the Courchesne bridge is now, and this witness refers to that piece of road as a place where sometimes their pottery was broken. Beginning on page 103, he gives an account of a fight with Indians, who on page 117, he says were brutos, Apaches. His account of this Indian fight is somewhat difficult to understand owing, in great part, to imperfect interpretation and to some interruptions by counsel, but it still is quite interesting, although it has no bearing on anything involved in the case. He remembers the fact of the Civil War, when the Texans passed to the north, at which time he was a grown man, and he remembers the battle

of Valverde, with which place he is acquainted, having been there later when he was a guide in the employ of a Captain in the army at Roblero, which he believes is the same place as Fort Selden. When he went with Van Patten to White's Ranch, he went in an automobile, but there is no house there now, only the signs of it, and there is a little monument of stone and the monument which he first saw with his father was of stone which could be scattered. He went twice with Van Patten, perhaps a month apart, in this year, but he does not know anything about months. He was asked if Van Patten, when they got to White's Ranch, said to him, "Here is where old White's Ranch used to be", and the witness answered, "I told him". He was further asked, if Van Patten didn't tell him he wanted him to come as a witness and tell that the river was at White's Ranch, and he answered, "No, sir. What can he tell me? I know where the river flowed." He says, in substance that while he does not know what year the river went to Piedras Paradas, it was in the same year of the war between the North and the South, when the river took out the mill of Don Simon Hart. By other testimony it is shown that there were two great floods, the second of which, changed the course of the river from the east side of Mesilla to the west side, and these floods were in 1862 or 1864, and that by one of those floods the dam of the mill of Hart was destroyed. He says it was quite far from Old Amoles to the river and after the river came in and destroyed Amoles Viejo, then New Amoles was moved over to the edge of the hills where it is now and that the river was quite a distance east of Old Amoles—a long way. Being asked which way the river ran below Anthony, he stated that it ran down this way, and that the signs are still there; that the old river-bed still exists there. In a good deal of his testimony, he attempts to describe the course of the river at different places, which on paper is not clear or intelligible, although it is evident

that he had in his mind, a clear picture of the river, as he knew it in his childhood, and was endeavoring to describe it. At page 126, appears a sample of the efforts by counsel to make witnesses say that Van Patten told them how to testify, but this witness clearly repudiates any such idea, because he declares that he, himself, knew where the river run, and being asked if Mr. Post, the surveyor, knew where the river ran in the early days, he responded, "What did he know, sir? How can he know, or any of you? How can you know where the river ran in those years?" and further that he went to show them where it ran.

On re-direct examination, beginning on page 127, it appears that on one of his trips up the river from El Paso, the Attorney General of New Mexico accompanied him, and he says that he showed me where he knew that the monument was at White's house, and from that point went north on foot to show where the road went up on the hills. He also said, that he showed me the ruins of the house of Doroteo Salado at Canutillo Viejo, and the Heights of La Bruja, but for some of the places about which he was asked, he knew of no names, and he enumerates names of the places which he knew, being, White's Post, Duraznito, Canutillo, Las Brujas, and where Scott's Station was. He says that the house of Gualdarama was at the place called Las Brujas. He further says, that after arriving at Anthony, he took me to show me where the old Scott Station was, and that to go there from Anthony we went by a street that leads to the west, and when we reached the old river-bed, we went up the old river. The photograph which is in the record as Complainant's Exhibit No. 2, shows the old river-bed with some water in it, looking northward, and it must have been taken from some point near where the road to the west from Anthony crossed the old river-bed; while Complainant's Exhibit No. 7, shows the old river-bed at

Alamitos with some water in it. This witness says that at the time of our visit there was some water in the old river-bed; that there was a little water in the river-bed, where there were some boys fishing. He testifies with great distinctness, that the places where he showed the river to the surveyor, or surveyors, were the places where the river ran when he was a boy.

At this point, I think I may properly appeal to the general experience of men who have had any knowledge of such things as these witnesses testify to. I have no doubt that there are members of this court, who in their early lives may have had great familiarity with streams, hills and groves of trees, which they could identify and point out at the present time if upon the ground, but yet would find great difficulty in testifying definitely and clearly about such locations. I know that this is so with myself, and I cannot believe that I am any exception to the general rule. In my boyhood, I was quite familiar with a small river for a number of miles in its course, and with the hills and trees on each side, and I am sure that I could go over the ground at the present time and point out exactly where the river ran when I was acquainted with it, and could point out every hill and grove of trees, which I then knew, with reminiscences about every one of them, and yet I know that I could not testify in any satisfactory manner as to the course of the river at any particular place, or as to distances. I could not describe the bends and turns of the river from the old saw-mill, down to the bridge where the road to the saw-mill crossed the river, nor give any accurate estimate of the distance, nor as to how far it was below the bridge to the place where the boys were in the habit of going in swimming; nor could I describe the course of the river below that place, except in the most general way, down to where it made several twisting bends through the farm of a neighbor,

nor beyond that, down to where there was a great bend in the river, in which we almost always found wild ducks; and yet I know, that I could go over every foot of the ground and identify every place, no matter what changes there may have been in the course of the river. The theory of counsel for the defendant in the present case, appears to have been that all these old men were hired perjurers, trained by the unscrupulous and wicked Van Patten and others to testify falsely as to the course and the location of the river, but it is incredible that any man by training could produce such an enormous quantity of consistent perjury, or, if the testimony were really of that character, that there should be so much variation in numerous details, according to the varying memory and intelligence of the witnesses. It is to be noted, also, that much of the testimony of these witnesses relates to things as they now exist, and if the witnesses were not telling the truth, it would not have been difficult for the defense to contradict them as to matters of the present day.

We come next to the testimony of

ELIGIO PEREA

which begins on page 131 of the record.

This witness lives at Mesilla, and has lived there ever since December, 1850, and is now within a few days of 70 years of age. He remembers the raising of the American flag at Mesilla in 1854, and thinks it was on November 24, but is not quite certain. He was born in El Paso del Norte, and after going to Mesilla by the road on the west side of the river, came down to El Paso at the end of 1854 on the east side and after that travelled up and down the country very frequently, sometimes on one side, and sometimes on the other, and became familiar with the country, as he came down every

year to the fiestas at El Paso. He was acquainted with the place called Los Alamitos, because it was a stopping place, and they used to stop there to eat their meals. It was a regular stopping place because the river was there and it was appropriate for such a place. The first time that he stopped there was in 1854, and at that time there were no houses at Alamitos, but afterwards houses were built there, and he knew the man named Scott, and his house afterwards became the mail station. He had recently visited that place as he had been asked to recognize it and thought it prudent to visit it so that he would be positive about it. There are now houses at a distance, but right in that place, none. He found the ruins there, very much obliterated, and the river bank which he believed to be the same that he first saw in 1854, which was near where the stage station was. From Alamitos, the river used to run down for a certain distance, and then turned a little to the west, and then would give another bend to the east. He thinks that bend was not very large, because it turned back soon, and when it came back, it came to a big embankment, and then it made a turn and would turn back again, and the river was just snaking in there that way, until it came down to Vado Muleros. He was acquainted with the Estero Redondo de las Sanguijuelas, but he does not remember how near it was to the river, because when the river rose it flowed into it. He says it seems to him that at the place now called New Canutillo, the river flows farther towards the west than it formerly did. He knows that the Bosque de Artesa was on the other side of the river, and people used to show him the place where it was. He heard of the Beaver Dam, but he never saw it, and says it was probably inside of the Bosque, where you could not see it from the road. On the first trip he was acquainted with Doroteo Salado, because he was a friend of his father, and he had a little shack at Duraznito, and afterwards he lived farther up

the river, where there was a little spring that he used to get water from. He has recently revisited that place, but could not find the spring which must have been covered or obliterated, but he found the place where the spring had been, more or less, because there is a growth of grass there, that generally grows near springs; and he saw the ruins of the little houses. On page 136, he says when he first knew the place called Duraznito, nobody lived there, but this is different from his statement on the preceding page, that Salado lived there, and this may perhaps be attributed to some misunderstanding through the interpreter. He knew the place called White's Ranch, but did not know White himself. The river was very near White's house, and the house was in a place where it could never be reached by the water of the river. From White's Ranch to the Piedra de Amolar, the river ran right close to the bank to the east. From White's Ranch to come to Paso del Norte, the road would come over on the hills, and when they wanted to travel on the west side, they went by the Muleros crossing, and on the west side the road came to the place called Cerro Pardo, and would come out at the El Paso Dam. This is not quite clear, but it means that the road went around through the mountains, returning to the river at the dam which was above Paso del Norte. On the east side, the road would turn up in the hills a little distance below White's house, but the river would go snaking around, sometimes right next to the hills, and other times it was not, but generally would go to the hills. He says that on the east side of the river there was only one road.

On cross examination he said that when he came down on the east side it was in December, about the 9th or 10th of December, when the water was very low and there was only water in the natural channel. Year after year, in May, the river used to come down high,

and at times he saw the river from one side of the valley to the other in places, and that when it became full, it would turn and make many angles and make some new islands and lagoons, and then it would come back to the same course and there were places where it would move from one side to the other side of the valley.

It is to be borne in mind, as to these cross examinations, that much here set out is from the language embodied in the questions and not distinctly stated in the answers.

Above White's Ranch up to Alamitos, the river was very crooked and did not run straight. When he first went up on the west side, he went by the Muleros crossing at White's house, where above or below, it was all called Vado de Muleros. Other witnesses also indicate that what was called Muleros, was quite a long stretch of country on the west side of the river, both above and below White's house. They crossed above White's house to come by Cerro Pardo by the Canoncitos—but this statement evidently referred to the course of travel coming down the river and not to the course pursued on his first trip up the river on the west side, as Cerro Pardo and the Canoncitos were farther south than the place called Muleros, and on the road to Paso del Norte through the Muleros Mountain. He says that the road from White's house went through a meadow and then up to the sand-hills on the other side of the mountains—evidently still referring to the road going across the river on the way to Paso del Norte, as he then says, that the other one would come on this other side from the hills—clearly referring to the road coming to Paso del Norte on the same side of the river as White's Ranch. The Amoles road, was the first road he travelled, but going to White's Ranch and to the north and to the river, there were only two roads. He first knew the Piedras Paradas in 1850, when he travelled there the first time, but from that point of rocks, the water in the river could not be seen because

it was very far. In the four years between 1850 and 1854 he was not out of Mesilla and so did not see the river. He came continually to the fiestas and it was very rarely a year that he did not come, the fiesta being on the 12th day of December. He came down in 1854, 1855, and in 1856, and he ceased to come at the time that he went to Arizona, where he stayed four years, and this was after the Civil War and in the year 1870. He is not very certain, but it was in 1858 or 1859 that he had made a trip up and down the valley, but between 1858 or 1859 and 1870, he went to White's Ranch several times, but after 1870 for four years, he did not, because as he had already stated he was in Arizona. In the years from 1896 to 1899 he travelled to El Paso with fruit in a wagon, but the wagon road was then greatly changed from what it had been when he was a boy. He believes he has always seen the river rise in May and go down in June or July. On further cross examination, he says again that he first saw Alamitos in 1854 and that Alamitos was an old name that it had, and that it was a stopping place for travelers, but no houses were there then and the river was right next to the bank there, and there was quite a lot of cottonwood trees which were there until the flood broke the bank and took them away, and the river went over towards the west. The river got the trees by breaking the bank from underneath. At the time the house was built there were still some of the trees. He says that the river was a crooked river, with many bends reaching toward the west side. He says that he was first asked to go and tell where the old river was, two weeks before and that was the only time he had ever been talked to about it, and that Mr. Van Patten with some others was the first one, and that he has known Mr. Van Patten since 1856 or 1857 and that he knew him at Mesilla and that Van Patten came to the country with an uncle of his and was then very young, the same as himself; that

Van Patten came when the overland mail route was established, which he thinks was in 1857, and that he and Van Patten were about the same age, and that Van Patten took him to Alamitos to see if he could recognize the ground, and that there are ruins there, and the first house was a hut of poles, and at first there were only houses built of poles, but there were several of them and there remain ruins of old corrals or pens. He says that some partners of Van Patten were with him, whose names he does not known. The word used by the witness was undoubtedly *companeros* which may properly be translated as *partners,* but which also may mean, and undoubtedly did in this case, *companions.* One of these persons he recognized as the commissioner, Mr. Baker, and also Mr. Reber of counsel for plaintiff, whom he pointed out in the court room, and there were some others whom he does not see there, and there was a surveyor and there were four or six of them altogether. They went to recognize the place where the old houses had existed and found the old river-bed there, and continued down as far as where the house of Scott used to be, which was a short distance from Alamitos. Alamitos was a little to the north of where Anthony now is. There were two other witnesses who went with him. They were Leonidas Provencio and Benigno Fresquez, who live at Mesilla, and he has known them a very long time, since they were very young and they are both somewhat older than he, four, or five, or six years older. Coming south from Alamitos, they came to the bend called Las Brujas. After 1899 he had not seen that place until he went with Van Patten. When he went with Van Patten they rode in an automobile. They came all the way down in one day and he went back to Mesilla on the train. Three or four days afterward at Las Cruces someone wrote down a statement of what he knew, and he thinks it was Mr. Baker, but he is not certain that he signed any statement.

On re-direct examination, he stated that he found the place where Scott's Stage Station was and that there were ruins there very much obliterated, and he is certain that they are at the same place where the stage station was, and that in the years when he was young, the permanent, ordinary channel of the river, when the river went down, from Alamitos down, was generally to the east on the east side. When he first went to Mesilla, the town was on the west side of the river and is now on the east side, and he was there when the river changed so that it ran west of Mesilla. The first time that it broke through was in 1862 on the 12th day of June, but they stopped it with a dam and put it through its old channel, between Mesilla and Las Cruces, but the next year, or two years afterwards, it changed again, but up to that time, from his first acquaintance with the river, there had not been any permanent change in the river. When the river would rise, everything would be overflowed and when it would come down, there would be several currents, and when the river would come down to its natural size, it would go in its regular channel. He identifies the photograph which is in the record as complainant's Exhibit 2, as showing the place of Alamitos, and that the house of Scott was farther to the right. When he went there two weeks before he found a cottonwood and a willow tree near the ruins of the old stage station. (His testimony is more intelligible if we bear in mind that the place called Alamitos was not a small single spot, but was of considerable length up and down the river, as is very clearly shown in the testimony of Margarito Lujan at pages 173 and 174 of the record.)

On re-cross examination he says Scott's Ranch, when he first saw it, was a little ranch and that the post was there when the overland mail was established. He says that Scott's Post was the first ranch established there; that some while after a man called "Gold Tooth", by

the name of Jackson, lived in the house, but he is not certain whether that began first or the Scott Post, and they were not very far apart. It was a very long time ago that Scott's Post disappeared, but after the Civil War; he passed this place several times after 1858, and then he went away and when he came back the place was already in ruins, and he thinks that after 1870, the houses were there somewhat destroyed. The house was made of poles and he thinks the ruins are ruins of the old house of Scott, but is not positive because he was not there continuously. There were large cottonwoods around Scott's Post and they might have chopped them down or maybe the water took them, but he does not know. He believes that the trees in the picture have sprouted since the early days. He cannot see the ruins of the house in the picture and the picture does not look as the place was before, but he recognizes it as a picture of the spot which he saw two weeks earlier.

The next witness whose testimony was presented is

CORNELIO LOPEZ

beginning on page 155 of the record.

This witness lives in Dona Ana, and was born at El Paso, now called Juarez, but which was then called El Paso del Norte. He was about 10 years old when he went up the river to Dona Ana. He remembers when they raised the flag at Mesilla, and he was about 18 years old at that time, (which was in 1854). When he went up the river, he went on the east side with his father. He was acquainted with White's Ranch. After that time, when he went up the river he came down to Paso del Norte many times and usually travelled on the east side, and became well acquainted with the road and river on the east side. In those early years he became acquainted with Los Alamitos and there was a house

there at the side of the river. The river ran to the south and made a small bend, turning around in different places, but he does not remember well to which side the first bend below the station was made. He says the station was above Anthony and he had recently visited the place where he found the ruins of the station, which are quite a distance from the present road, and the old river is still there. From the station the river flowed to the south and ran straight for a distance and then the river ran to the west, and after making that bend, it was not far from the hills on the east of the river. He knew a man named Gualdarama, but did not know him well, but only heard his name mentioned frequently, but he does not know where Gualdarama had his lime kiln or calero. He did not know the place called La Bruja or Las Brujas, but had only heard it mentioned. He did not know a man named Uranga, but heard him mentioned only, nor did he know any place called Uranguena. He does not seem to know the present town of Vinton where the brick yards are. He had heard the Bosque de la Artesa mentioned, but was not acquainted with it, and had only heard mentioned the Estero de las Sanguijuelas. He knows the place now called New Canutillo and at that place when he first knew it, the river flowed where the railroad line runs now. He did not know the Beaver Dam, but he had heard Doroteo Salado mentioned and he had seen him as he passed by. He knew the place called Canutillo Viejo and there were people living there when he first knew it, but he did not know the people. He used to call at the spring for water. The spring was near the house and is there yet, only it is covered, and it was more or less 10 or 25 yards from the river, and it was at the edge of the hills. He knew the place called Duraznito, and at that place the river was not very far from the hills. He knows the place called White's Ranch and when he first knew it, the river was near to it, and White's Ranch was about

10 feet, more or less, higher than the river. Coming up the river above White's house, the road ran on the hills which was because the river rose. When the river was low they could travel on the bottom road, but there was only one road. Only when the river went low they could pass through in the valley. When the river was low, it was possible to travel from White's Ranch to Alamitos in the valley, but the people travelled over the hills through necessity, not for pleasure. He remembers when Mesilla was settled, and when he first knew Mesilla it was on the west side and the river flowed between Mesilla and Las Cruces, but now Mesilla is on the east side. He remembers when the river changed its course at Mesilla, but cannot tell what year it was. He was at Dona Ana when it changed, some miles away from Mesilla. He does not know anything about a change in the part of the river between Alamitos and White's Ranch. He visited that part of the river recently with Van Patten, Mr. Reber, and the surveyor, with whom he came down from Alamitos to White's house, and he showed them where the river ran as he knew the place when he was a young man. He showed them Alamitos, Canutillo Nuevo, Old Canutillo, Old Duraznito, and White's house. He showed them at Canutillo Nuevo where he saw the river and at Alamitos, but not between those two places, nor between New Canutillo and Old Canutillo, but from New Canutillo to Old Canutillo they went on foot along the railroad until they got to Old Canutillo, where he stopped and showed them where the spring was and where the house was.

On cross examination, he said when he first went up the valley, he was about ten years old and he remembered the river at times of flood, and when it was low also. After he went up the first time he came back within two or three years at the most with his father who was living at Dona Ana and came with him. He

remembers coming down about twice on the west side, but never went back to Dona Ana on that side of the river. He saw the river day after day, but at White's Ranch only as he went by, and went by so many times that he does not have it at present in mind. He remembers the Civil War, but not in what year it was. He heard of the battle of Valverde at which time he was still coming to Paso del Norte, and came for about two years more, but after that time he never saw the river between White's Ranch and Alamitos until he went there with Van Patten in August or July. He was with Van Patten three days and camped the first night at New Canutillo and the second night at the same place, and the third day he went home. In the early days there was much more water than at present, and the river would go high from the east hills to the west hills. When the water went down, there was not only one or two roads, but they would travel anywhere that they thought was best. There was a road on the hills from White's Ranch to Alamitos, and there was one in the valley in dry times. The flag was raised at Dona Ana first, and afterwards at Mesilla. When the flag was raised at Dona Ana, he was there and must have been about ten years old. When he first saw Alamitos and Scott's Station, the houses were already built. He is unable to say what number of years passed after he first saw these houses until he saw them the second time. In answer to a question putting the words in his mouth, he answered, "Yes, sir", that the river was turning and bending through the brush and trees, like a big snake. This was Question 205, on page 167, but the next question sought to make him say that after the big floods, when the water would go down, the channel would be changed, but he answered, that it never changed and always went down on the east side, and that when the high flood would come, then it would change, but when it would go down again, the river

would come back to its course. On the same page, counsel leads him to say that the main low-water channel in the early days, was the same as it is now and has always been so. He further says that at Mesilla it changed once and has not changed since, and being asked how he accounted for that change, he says, because he saw it and it is still there. He does not remember that the river flowed over towards Amoles. When he was a boy, there were some little houses at Old Canutillo where there were several families whom he saw when he went down to the spring to water his horse. At Old Canutillo there is nothing but the ruins of the little house where the families lived and where the spring is there is a post stuck in the ground, but the spring is covered up and a person would not know that there is a spring there. His parents were the ones that had showed it to him from the first time that he went there, but Van Patten did not show it to him. He showed it to Van Patten. He says that he could show it, not only to Don Eugenio, but to any person that wants to go, though there is no water running and no path now leading to it, although there used to be one. He says that he can show where that spring used to be without the post. He knows that the ruins there are of houses that he saw as a boy, because he saw them and the ruins are there and the signs of the walls and the foundation of stone, and is positive that they are ruins of houses where people lived, and that he saw the people living there. He does not know of any spring at Duraznito, and from White's Ranch to Alamitos, there was only one little spring, the one at Canutillo Viejo. At Duraznito, the river made a bend to the west, but he cannot tell how much of a distance, but you could always see the water between the trees, but then he is led to say that, if the river was with a little water, one could not see the water in the channel which was far away. He is unable to tell how many big bends there were between White's Ranch and Alamitos,

but there were large and small bends, but he cannot state how many. As the river came down to White's Ranch, there was no bend. It ran down straight, next to the hills there. He never went up the canon nor out by the smelter and the cement plant, but the road was on the hills. The road that went over the hills came from Paso del Norte. (At this point, on page 171, counsel tried to lead him to say that the road came back to the river north of White's house, but he only said that it came back very near to White's house.) The road on the hills was travelled more by Government wagons, even more than the people of the country travelled it, but he does not know what place they travelled to, although he used to see them with his own eyes. He did not know where Fort Fillmore was, but had heard about it only.

The next witness is

MARGARITO LUJAN

whose testimony begins on page 173.

He says that he believes he is 71 years old, from what his father informed him, which was that the year when Dona Ana was established, the next year he was born at Dona Ana, where he has lived. He was about 11 years old when he first travelled up and down the river. If he was 71 years old, it was in 1853 that he was about 11 years old, and after that he went down and up the river to the feast at El Paso, and came to El Paso about every six months in those early years. He knew Alamitos. The place called Alamitos was large, but there were trees near the road where the stopping place was, which was the same place where a stage station was afterwards established. It was established there after he first knew the place. The river was very near to that place when he first knew it, and he has recently revisited it and found the ruins where the stage station

was, and he found the banks of the old river right at the same place, but the river does not flow there now. There is only a draw or arroyo. It was called Alamitos, because there were cottonwood trees there, and he believes that one that is there yet, is one of those that was there at that time. He examines the photograph which is plaintiff's Exhibit No. 2 in the record, and says he believes the place is Alamitos, but is not very certain. Below Alamitos, when he first knew the river, it ran straight towards the south for quite a long distance, and then it would make a large bend turning to the west, and after that it ran right against the hills on the east side, and then flowed to the south. When he was a boy, he never knew anything about Gualdarama. He knew a place in the road where it went upon a height, and it was said the height was called Las Brujas. The road traveled over the hills all the time and he understands it was because there was no way to travel by the river, except in the river. He traveled on that road when he was young, and remembers White's Ranch. When the river was high and it would overflow some of the corners (rincones), then the road would go at all times over the hills, but when the river was low there were some corners where it would go in the valley. (It should not be forgotten at any time, what these corners are, as the interpreter called them, as heretofore explained and as shown by the photographs which are complainant's Exhibits 36 and 39.) He knows the place now called Vinton, and when he first knew the river it flowed very near, right next to that place, which is a new town. He knew what was called Uranguena Bend, which is the same one he previously told about, and the river came back to the hills between the place called La Bruja and Sanguijuelas. He says that Sanguijuelas is a little small animal that was raised in the water, and the place was an estero of water, a swamp, which was very near to the river. He was not acquainted with the Bosque de la Artesa. He

knows the place called New Canutillo and has recently seen it, and when he first knew the river it was very near to that place. He remembers seeing a beaver dam in the river. There were two currents of the river there, but he never saw the place where they came together below, but they must have come together. He knew Doroteo Salado and knew where he lived, because when he came there with his father, he would stop there, and he told him that there was a grant there which belonged to him. This evidently refers to the Canutillo Grant, as he states at page 207 that his father's name was Geronimo Lujan, and the name of Geronimo Lujan appears as one of the grantees of that grant as will be seen by reference to page 2821 of the record, and on page 2823 it appears that he was one of the two persons appointed to measure the land. The river was 25 or 30 varas from the house where Salado lived, and the water from the spring, which was very near the river, ran into the river. He had been there recently and found some ruins which he believes is the place, but the spring is dry now. He found the place where the spring had been. He remembers where he was told that Duraznito was, but he never saw anybody living there, and never saw Duraznito. The river flowed right next to the hills and Duraznito was inside, and from what he saw, was next to the river. At that point, the [illegible]on road was over the hills. From the Estero of the Sanguijuelas, down to Duraznito, the river ran near the hills, but in places it would make small corners, and the road traveled through these corners. From Duraznito to White's Ranch, the river ran at the edge of the hills, and below White's Ranch, the river ran straight to the south. At White's Ranch, the river was 20 or 25 varas from the house which was higher than the river. He knew the Piedra de Amolar, and the river was very near it. He remembers seeing a monument near White's Ranch and was told that it was the line of Texas and

New Mexico. When he first knew Mesilla, it was on the other side of the river, but it is now on this side. He remembers when the river changed at that place, and he was already a man, and he believes it was in 1862. He says that the soldiers from Texas broke the dam that the people of Mesilla built and let the river out. In this he is probably mistaken, as Colonel Van Patten, who was a Confederate soldier at that time and place, testifies at pages 627 and 628, that the soldiers helped the Mexicans to stop the river and kept it from coming into Mesilla in 1862. The witness further says, that up to the time of the flood which left Mesilla on the east side of the river there had been no change in the river between Alamitos and the head of the canon above Paso del Norte, but from that time on changes have taken place.

On cross examination, he says that he had seen Mr. Clancy the day before, but did not talk with him, that he knows Mr. Reber and had known him for some years, that he knows Mr. Chavez and saw him for the first time about three months before, when he came to Dona Ana and talked, as he understands, about the same business now being investigated, and was asking some questions. He told the witness something about what the case was, but did not tell him where the river was, because he, the witness, told him where it was, and never told him where he wanted the river to be placed. He did not tell the witness that Texas was trying to push the river to the west, nor that New Mexico wanted the river placed to the east, and did not talk to him about his friends being interested in the matter. He asked the witness where the river was at Alamitos, and the witness told him the same thing that he is telling here. A question and answer at the foot of page 181, is another illustration of difficulties about interpretation, and of the same character as the one already noted as to the evi-

dence of Felipe Madrid. The question and answer are as follows:

"Q. 147. Did he not ask you where the river ran when you were a boy?

A. He did not tell me. I told him."

There can be no doubt that the interpreter gave him the question in such form that it was in substance, "Did he not tell you where the river ran", but in this instance, the witness answered in a more discriminating way than Madrid did, and was not misled. At pages 182 and 183, appears the record of persistent efforts by counsel to lead witness into discrediting himself, but without success as will be seen from an examination of what there appears. On page 183 he says that his father told him that the grant was the Grant of Canutillo and was from the spring to the south, and that it was a square league, and on the west side of the river. He says that he never knew that below Canutillo, the river made a big bend to the west. There was a big bend in the river above Duraznito, and he believes the bend is now as it was when he was a boy, and he understands that there was no other bend, because he has gone up there now and the railroad track is the river when he first knew it, and the railroad took what was the channel of the river when he first knew it, and this is from his recollection as a boy 11 years old, up to the time that he was 20 years. In the course of this cross examination, he was asked, if it was his business to watch the river to see whether it changed its course, when he was a boy, and he said, "No, it was not my business, but I saw it". Then the following question was asked and answer given:

"Q. 210. Did somebody tell you to watch it to see what would happen to it?

A. How could they ever tell me to go and take care of the river? That is an impudence."

There were very large floods in the river when he was less than 20, and the water would flow in the river and overflow everywhere. The whole valley is called the Rio Grande, but where the water flows is the river, and when the water is high and spreads over the valley, that is not the river, because the river is the canal where the river-bed is, where the water flows. (At this place the interpreter did not attempt to give the English equivalent for the word "canal", which should be *channel*, but used the Spanish word.) In flood times, when there is much water, the river-bed does not hold it all and it goes over all on the outside, and maybe it does make channels by the corners. The country is not all sandy in the valley, and when the water got so high, when he was a boy, it would wash down many of the trees into the river. When there was a great deal of water, it would flow on the outside, and when it would diminish, it would come back to its course. In recent years is when the largest flood comes down. There have been many, but the old people tell him that there has never been such a large flood as the one in 1862. He remembers being at Juarez before he was 11 years old, but when he was 11 years old, was the first time he remembers about the river, because he then had better knowledge of things. He denies that he said, that during the low tide of the river, when the valley was not boggy, he sometimes passed along through the valley, and said that there were some corners (rincones), and they would go by them, or travel through them, and he never knew of any valley road through the middle of the valley in dry times. He does not know that there was a ford near White's house. He was in Amoles once, when he was very small, with his father, who was bringing him by that place from school at El Paso, and in about 35 years he was there again. He did not learn to amount to anything in the school. He does not remember the time when the river ran near Amoles. He heard it men-

tioned that Amoles was washed away and the people had to move, but he does not remember how old he was at that time. He saw the Piedras Paradas, when he went by, and at that time his father told him that they were the Piedras Paradas, which are stones that stood up from the ground, and he saw them after 30 years, when he was going to Dona Ana from Juarez, at which time he says they went out this way (pointing northwest) by the mouth of the acequia, and turned around the piece of the mountain on the other side. The mountain was called La Sierra de El Paso, but he has not heard it called the Muleros Mountain. That road went up on the other side of the mountains and north of Piedras Paradas. In part the road would go through the hills and in parts would come down through the bosque. It was a crooked road. The hills were not very high, but sandy, and where they could find a good road in the bosque they would travel that way. He only knew one road on the west side which he traveled, and at times it would go up in the hills, and at times in the valley, and it was the same road, part in the valley and part in the hills, at different places, but he never went there but once. He has known Van Patten probably 15 or 20 years, but he never talked with him about the matter concerning which he is testifying. He has seen him in El Paso and saw him in the court room this morning. He saw Van Patten the day that he came to El Paso at the Grand Hotel. He has not talked much with Mr. Reber, only common conversation, as he talks very little Spanish. He has talked very little with Mr. Chavez on the street, and being asked if he thinks it would be anything wrong to talk with Mr. Chavez fully, he answers, "As long as Mr. Chavez does not ask me what I am going to testify, I do not think it is wrong to talk to him, or anybody else". Counsel then asked him, if he had been put on the stand without telling somebody what his testimony would be, and he answers,

No, because in May or June, as he had said before, they came to Dona Ana and called him to ask him what he knew about this business, and then he told them what he knew of it, and his answers were taken down in writing on that same day, which was before he showed them the river. Mr. Chavez acted as interpreter and there was another man there whom he did not know. They asked him questions and he made answers to them, and they must have written them down as he saw them writing, but he did not sign any paper of what his testimony was. Yesterday or the day before, they asked him a few questions, Mr. Reber or Mr. Chavez, before noon. He does not know what other witnesses had said about where the river was, and he says nobody told him where they placed the river, adding "I knew where the river was". He has never seen any map representing the location of the river in the early years, and never saw any marks on a paper which was shown to him, showing where the railroad was or the river, and if he had seen it, he would not understand them, as they are in English. When he went down the old river-bed in May or June, the surveyors went with him and Van Patten, but he does not know what Van Patten has to do with the matter, and when he came to Dona Ana, they asked him, if he knew the country from Alamitos down this way, and he told them "Yes", but he does not know why Van Patten asked him. Mr. Reber and Mr. Chavez were with him, and another man whom he does not know. That day they did not go anywhere. It was a month or maybe more after that, before he went to show them the river, the surveyor and Van Patten only. He believes that Post is the name of the surveyor. They came to Anthony on the train and from Anthony to El Paso, in an automobile. He has ridden in automobiles before. The first place he stopped after starting on this trip to locate the river, was at Anthony, and he then went to Alamitos on foot, which was about 600 yards northwest

from Anthony. When he first saw Alamitos, there were cottonwoods there and willow trees, and Tornillos, and Cachinilla, brush and grass, and no houses. He does not remember what year that was, but it was after the war was over. This must refer to the Mexican War. With reference to the battle of Valverde, he believes the station had been a long time established already. (The battle of Valverde was in 1862.) It was a mail post, but he cannot remember the name of the man who occupied it. Sometimes he can remember his name, but not now. He cannot say how long the house stood there. It was a little house built out of poles and mud chimneys, and he believes the roof was of what was called "cachinilla". The house was not very high. When he visited the place recently, he found the ruins of the house, the dirt that was on the roof, and the mud that was on the walls. Being asked if they would need necessarily dirt on the roof, he said, "We Mexicans use it yet". Being asked if they did not also use the leaves of the sotol, he said that in some other parts he had seen it used, and had seen it used in Sonora, where he was more than 40 years ago, but he never lived in Sonora, where he went as a driver of wagons and must have been there about two months. He believes that was in 1868. He went from Fort Yuma, and he thinks he went to Fort Yuma about 1865 and worked between Tucson and Yuma until 1868. He was away from Dona Ana about ten years, most of the time in Arizona, in Prescott, Phoenix, Tempe, Florence, Gillett, and many other places that he does not remember now. He came back to Dona Ana in 1881. He might have gone as early as 1862 to Arizona, and the only river he crossed was the Salado at Phoenix. He came back alone on horseback, when there were many Indians in the country, but they were not bad then. He came back in 1881, and then the Indians were on the reservation, and at that time the railroad was built from the north to El Paso, and they had put the railroad, as he believes,

in what was the river-bed. Counsel asked him, if the track all the way from Alamitos to White's Ranch, was made over what was the old river-bed, and he answers in the negative, but all the way this side of Old Canutillo he believes the railroad was laid in the old river-bed. It was a long distance from White's Ranch to the bend that he has mentioned. There might have been a small bend near Duraznito, but he does not know it. The river from Duraznito this way, was straight. He does not know when it changed, but it must have changed, as the road-bed was where he knew the river to have been. Between White's Ranch and Canutillo, there is a river-bed plain to be seen. In part, the river is in the same place that it used to be, and in parts it is not. There is a piece of it from Piedra de Amolar where the river runs in the same space that it used to run, and from there the river is changed. At White's Ranch, the river was there before, and he did not see any bend. The Piedra de Amolar is this side of White's Ranch, about a mile. The road went right by the side of those stones. Near the foot of page 201, after having said that the river flowed straight at Alamitos, he was asked for how many miles, and then how many yards, and then how many varas, and how many feet, it flowed straight, and near the top of page 202, he was told to guess at it, to which he said as the record shows, that he was not a guesser, and that if his father had made him a guesser, he might be one, and that he had not guessed at anything he had testified about, but had seen it, and that was why he had said it. Here is another interesting piece of interpretation. It is clear that when he was told to *guess* at it, the interpreter used the Spanish word *adivinar*, which from its very form would indicate to anyone that it was not an exact equivalent for the English word *guess*, and when he answered that he was not a guesser, what he really said was that he was not an *adivinador*, which really means something like a diviner, or soothsayer, or

conjurer, and that this is evident will appear by examining the questions and answers near the top of page 205, where the witness says, "I told you, if I was a guesser, I would tell you all your thoughts", which plainly shows that he was not using a word which was a proper equivalent for *guessing*. He says he does not know when the river made a change from where it was when he was a boy and that he did not see it change, but that it is not now where it was when he was a boy, except at the place called Piedra de Amolar, and another place above where Gualdarama's house was, and also at the bend called Uranguena. He knows that at the bend of Uranguena is the same place that the river ran when he was a boy, because he knew it for more than 20 years, though there was nothing there. He never knew Uranga. If there was any house there he never saw it. He shows entire inability to estimate how far out into the valley the bend extends. The beaver dam was down below the bend where the river had two prongs. The eastern branch had more water than the other one and every time he went by there, he used to see it, and both branches ran toward the south. The two branches looked to be about the same width, but the one on this side was deeper. On page 205, counsel leads him into a description of how the floods operated in undermining banks and trees. He never got his league of land that his father showed him, because a man came out and got a patent for it and gave it to Mr. Larrazolo and then to Magoffin and it stayed over there. The patent was located on the other side of where the river now is. It was issued by Mexico and Spain. The grant was given by Mexico. The grant was on the other side of the river when his father showed it to him. He never saw the copy of the grant, but says that the land was on the west side of the river, because his father told him so. Counsel then proceeds to question the witness about what he is being paid for his time in testifying in this case, as though it were a

matter of some importance, and he says that he was paid $2.00 for a day, and then the Attorney General for New Mexico stated that he was paying, on behalf of New Mexico, the expenses of this and other like witnesses. When he went with Mr. Van Patten in the automobile, Felipe Madrid of Las Cruces went also, and he thinks he is older than he himself.

The next witness whose testimony appears in the record is

JOSE MARIA RAMIREZ

beginning on page 208.

This witness has lived in Dona Ana about 18 years and before that at Mesilla, and he was born at Juarez, leaving there about 1852, when he went to Mesilla where he lived until he enlisted as a soldier and went north. The Captain of his company was Saturnino Baca, but it was not during the Civil War. It was when the Navajoes were taken to the Bosque Redondo. It may be said that this removal of the Navajoes was a notable historical event in New Mexico, and one which destroyed the war-like spirit of the Navajo Indians, and since that time they have always been peaceable. He was a soldier for three years and when he ceased to be a soldier, he came to live at Tularosa where he lived until 1894, and then returned to Dona Ana. Before he was a soldier in 1864, he became well acquainted with the valley of the Rio Grande between El Paso and Mesilla, and traveled up and down the valley five or six times or more, but came to the fiesta of Our Lady of Guadalupe on the 12th of December always, every year, and usually traveled on the east side of the river, and in those early years, leaving Paso del Norte, he crossed the river right here and traveled by the hills, coming down to the water at White's house. He knew the rock called Piedra de Amolar,

and the river was right next to the rock, and the rocks were bathed by the water when the flow was heavy. Between that rock and White's Ranch, the river came down rather straight, and the river was very near to White's Ranch which was on top of a hill, and it was about 40 or 50 varas from the house to the river. The road from there went over the hills, because the river made turns, and when the river was high they could not travel below, but went over the hills. He knew Doroteo Salado who lived at Canutillo. He sometimes stopped at Salado's house, and sometimes camped outside. Salado's house was near the river, and he got water from a little spring below the embankment, about 30 steps from his house. The house was very near the hills. He knows the place called New Canutillo, and at that place the river has not moved from there ever since he has known it, and is very near the hills. He saw a beaver dam in that part of the country and it was above Salado's house, and when the water was high, the river at the beaver dam would branch out into two branches, but he does not remember where they came together again, but he believes they came together way down below. When the river was low the water ran in the eastern branch. He knew the place called Las Brujas, and no one lived there. He knew the place called Alamitos, which was the same place where there was afterwards a stage station, and the river was something like 50 varas, more or less, from the house. He does not know why it was called Alamitos, but there were cottonwoods, many of them, to the upper side of the station, large and small. There is one tree now at the station, which he believes is one of the trees that existed at that time, as far as he remembers. He has recently visited the place and found where the stage station had been, and also indications of the old river-bed near there which is the river-bed he knew when he was first acquainted with that place. He knows the present town called Anthony, and the Old Alamitos Stage

Station is to the upper side from where the town is. From Alamitos to the Piedra de Amolar, the river flowed down near the hills.

On cross examination, he says that he was a small boy, but was a hired man, when he first went up the valley in 1852, and must have been about 12 years old. He says he does not know just what year he was born, because he was a boy who did not know his parents. He went driving a cart to Mesilla and came back in about 8 or 10 days, and then went to Mesilla and was there for about a year. He drove oxen to the cart. He went to Mesilla in the summer time and the river was high and they had to go on the hill road. The valley road came over the hills and at places where it was dry they would come down over the corners (rincones), and then go up on the hills again. The road that was below was not a level road and did not run through timber, because there was no timber, the timber being on the other side of the river. At page 215, there seemed to be some confusion between witness and the interpreter, and the interpreter for defendant interposed and got an answer from him, that he could see the river from the east and would see it to the west during high water, and that he passed through while the river was up three or four times during the first year. It was usual to have big floods every year and the water would take everything in front of it, washing down big trees and they would lodge in the river and would make sand-bars, and he believes would cause the river to change its channel, as is most natural. Being asked, "Where is the first big bend from Alamitos, coming this way?", he says he is not very certain, but believes it is from New Canutillo below, and it would turn over to the west, and he could not see where it went. Above New Canutillo, he was told that the bend was called the Bend of La Bruja, and it would go to the west, but he could not tell how far it went.

He was asked whether the beaver dam was on an abandoned river-bed or on a slough and he said, "Yes, sir. It would come in this way (witness points with his finger and makes imaginary lines), and then one branch would lie off to one side and one branch to the other." He says he still does not know, and did not know where the western branch came back to the other. He never traveled on the west side of the river from Paso del Norte towards Alamitos, but he was at Los Amoles in his first years, going from Mesilla, but the only water he saw at Amoles was in the acequia, and he does not know where the river flowed down. Amoles was a ranch as far as he knows and there were a few little houses. He went to El Paso once on foot about 1855, traveling alone. He does not know the name of the road and he does not know whether there was a plain road from Amoles to Paso del Norte. On that trip he stayed at Paso del Norte during the fiestas in December and went back on this side of the river. At Old Canutillo there were three little houses when he went through there the first time, one he knew belonged to Doroteo Salado, but he does not know to whom the others belonged. Above those houses the river would give a bend to the west, not a large bend. He did not know the Bend of Uranguena, but he heard of Uranga. When he stopped at La Bruja some men told him there is a ranch over there belonging to Jose Maria Uranga. The men pointed out to the west to him, but he never saw it, and the big bend went in the direction of Uranga's house. He did not know the place called Duraznito, nor the Bosque de Artesa. After his first trip to the valley and back it was many years before he made that trip again, when he was already a large man. He attempts to describe the beaver dam, but says that he did not see the beavers, but men that traveled with him told him it was a beaver dam. He believes that the beaver dam is still there, or there is a part of it

still there. He saw the river at the places he has named, last June for the first time in many years. Before last June, he had not seen the river for three years, but it had been something like 20 years earlier that he had seen the river, when he was coming to El Paso, after the railroad was built and he came on the train. He does not know when the railroad was built, as he lived at that time at Tularosa. He was in Tularosa in 1866, after he was discharged, and lived there until 1894, and during that time he never came to White's Ranch or Alamitos, or Old Canutillo. He was in the army of Colonel Canby, and went to many places in the mountains. He joined that army in 1863. When he was 12 years old Alamitos was pointed out to him, and there was a little house and a corral there. The houses were built of poles and between the poles adobes of mud. He says the walls of the house were built of adobes, and that adobes are of different sizes, from two to three feet. Above Alamitos there was a large bosque, and at the place called Alamitos, the river flowed straight, and this way far down, it made a bend. Where the town of Anthony is, the river changed this way. Just below Anthony it made a bend to the west and then would turn back this way. He does not know how far out that bend would go to the west. When he went to this place in June, he went with the surveyor, whose name sounds like "Steen", but he does not remember all of the witnesses who were along, but there is one of them (pointing to the hall through a door just opened and where witnesses were sitting), and his name was Reyes Marquez, and there were six of them in the party. Mr. Reber was there and Mr. Van Patten, and they traveled on the train and in a wagon. They came to Anthony on the train and from there came to White's house in a wagon, and they were all showing where the river was, and some said what they knew, and others said what they knew, each one said what he knew,

and they agreed to say each what each knew. Counsel then asked him:

"Q. 320. Then they all agreed with you?

A. With me? Nobody agreed with me. I did not ask anybody to be of my opinion."

At New Canutillo he saw a bridge. He never heard of the place called Fronteras. He is not certain how old he was when he went into the army, but he was already a man.

On re-direct examination, he says that when he came on the train to Anthony, he went to Alamitos on foot, as soon as they left the train, and when they returned to Anthony they started down to New Canutillo, traveling on a wagon, arriving at New Canutillo about four o'clock. From New Canutillo to the south, they traveled about a mile on foot, but they did not travel on foot between Anthony and New Canutillo. He then says that from Canutillo south, they traveled about a mile, or maybe two, on foot in the morning. From White's Ranch, they went on foot about 200 varas to show them the old road. Being asked how it happened that he went alone down to Paso del Norte on the west side of the river, he says that he ran away from his boss, and it took him two days to go to Paso del Norte, and he slept in the bosque where no one could see him, because he was afraid of the boss coming and of the Indians also. He got down from the wagon when he was traveling to show where the river had been at Old Canutillo and at White's Ranch, and left the wagon at Anthony to show them Alamitos.

On re-cross examination, he said that the men who went along in the wagon with Van Patten had been friends with him all their lives, but he could not give the American names, except the name of Van Patten. Being asked to give the Mexican names, he gave the names of Reyes Marquez, Severo de la O, Cornelio Lopez, Isabel Banegas,

Jose Hidalgo, and himself. Reyes Marquez lives in Dona Ana, but he does not know where he was born and thinks he is older than himself. He then says that he is 71 years old, and Marquez has told him that he was 81. Severo de la O lived at Dona Ana and is younger than himself, about three years. He has known Cornelio Lopez four years. He was born at Dona Ana, but he did not known him until four years before, although it is a small place. He, himself, has lived in Dona Ana since 1894, and he had not known Lopez until four years ago. Banegas he knew the first year that he came to Dona Ana. He has known Jose Hidalgo something like 12 years. Hidalgo lives in Dona Ana but he goes everywhere and he tells the witness that he is 85 years old, and says that he came to Dona Ana from Senecu'.

Next we come to the testimony of

REYES MARQUEZ

one of the persons mentioned by the witness Ramirez. His testimony begins on page 232. He says he is 82 years old and was born in Senecu', and his father took him to Dona Ana when he was 11 years of age, and he has lived there all the time ever since. He remembers well, when he came up the river with his father and he was quite good size. When he was 21 years old he came to Paso del Norte many times, but before he was 21 years of age, he came two or three times only. He remembers well, the first time he went up the river, they stopped at night on the other side of White's, in the bosque, but where they stopped the place had no name. At the time of flood, the road from White's Ranch went over the hills, but in dry times it followed the foot of the hill, where the railroad is now. The river was close to White's house, "the bank of the river was right there". He knew the place called Duraznito, and the river was right there close to Duraznito. He knew Old Canutillo,

and there was a man there planting. He did not know the man, but just saw him there and saw the farm. The owner of the land lived there, but he had a laborer take care of the farm, and the Indians killed him there. The river was about 20 yards from the house where the man lived. He knew Doroteo Salado, and says that he lived at Duraznito, where the people had a ditch and a dam on the river where they got the water. He knows the place now called New Canutillo, and when he knew the river in the early years, it was somewhat distant from that place, to this side. He knew the Estero Redondo de las Sanguijuelas and it was near to the river, about 12 yards. He knew the place called Alamitos, where there was afterward a stage station, which was kept by an American, whose name he does not remember. The river was very near to the stage station. From Alamitos to White's Ranch in places it run to the south and gave turns. It did not run straight, but the river between Alamitos and White's Ranch was on this side, towards the side of the hills. From White's Ranch to Alamitos, in parts the road would go over the hill, and in parts inside of the bosque. It went over the hill because the water from the river would flow towards the foot hills. The river was right next to the foot hills. In the early years he knew the place called Las Brujas which was nothing but an open space, and it was on top of the hills and the river was very near to that hill upon which was the place called La Bruja. He remembers when the soldiers from Texas came up and the big flood was the same year that they went up. When he first knew Mesilla, Las Cruces was on one side of the river and Mesilla on the other side, but he says Mesilla was on the east side and the two towns are now on the same side of the river. He remembers when the river changed so it put the two towns on the same side of the river, and it was before the big flood, but there was a big flood which changed the river, but he does not know

when it occurred. Being asked if there had or not been any change in the course of the river before the time when the two towns were put on the same side, he says there was a rise before, and being again asked, if there had been a change in the course of the river, he said, that there had been a change, and that there was a big flood which came down and also from the rains, and it went that way (pointing to the west), but when it went down, it ran in the same channel as before. He knows the Piedra de Amolar, which is this side of the bridge, where the head of the canon is, above El Paso. The road leaving Paso del Norte went over the hills and came down to the river below White's house, and right next to the Piedra de Amolar.

On cross examination, he says he saw the Piedra de Amolar the first time when his father took him up, and the road was on top of the hills, but the road went close to the rock. That first time he was going to Dona Ana, and his father was taking him to leave him there with an uncle as a goat herder. His father moved a herd of goats up there and left him with the goats and his uncle, and he herded the goats about five years before he returned to Paso del Norte, when he came on horseback on the east side of the river. This would be about 1847. When he came back was at the time of the fiesta in El Paso, and the river was low and he could travel in the valley. He came alone and stayed two days only and then went back to the goats and remained with them for a month and a half and did not take care of them any more. He came again to Paso del Norte in a half a year, in the spring time, in May, and the river was a little higher. The big floods usually came down on the 15th of May, and the water overflowed and drove the people up on to the high road. In the early days the valley road ran close to where the railroad track is now and went around the edges of the hills, in the edges of

the timber. He does not know whose farm it was at Old Canutillo, and he does not remember the name of Price Cooper. There was a farm this way from Canutillo Viejo as he saw grass and hay in the corral, and corn, beans, and cabbage and beets. It was a small farm, about two acres. White's house was there the first time he ever passed. White lived there and had a corral of cows. At that time the place was Franklin, which is now called El Paso. There were very few houses there. He remembers a man named Ponce and he lived here and had corn and lived here before the witness went up the river. He never knew a place called Fronteras. He has heard it mentioned, but did not know it. He never heard of a party of surveyors going up the river in the early days. He never heard of an engineer named Salazar, nor an American named Emory, nor a Graham. He was in Dona Ana in 1850 and was there until 1860, and came back two times only to Paso del Norte. He cannot fix the year 1850 with any certainty, because he does not know what a calendar year is. He does not know when the Spanish-American War broke out, nor when Diaz ceased to be President of Mexico, nor who succeeded him. He does know that Diaz was President, because they said so, but he does not know when it was. When he knew about him, he knew that he was no longer President. He does not know who is President of Mexico now, but they say it is Villa. He does not know who is Governor of the State of New Mexico, and he says there is no judge of the probate court in Dona Ana, and the name of the district judge of the district in which Dona Ana is, is Ruperto. The name is really Edward or in Spanish, Eduardo. He does not know in what year was the Civil War, nor in what year was the battle of Valverde. He says he went with Van Patten and others to see the river, but cannot fix when it was. He says he does not know Severo de la O, but he went with Cornelio Lopez, Isabel Banegas, Jose Maria Ramirez, and

Mr. Van Patten, and Mr. Steen, and Mr. Reber. They came from Dona Ana to see the river, to Anthony, and then came down below to the house of White, and that was the first place they went to after they got off the train. They came in a wagon from Anthony to White's house and on foot by the railroad track and a wagon. They walked about half the distance from Anthony to White's Ranch. They came from Anthony to White's Ranch and back to New Canutillo the first day, and Jose Maria Ramirez was with him all the time, but he does not know when it was. He then says the first thing when they got to Anthony, they went to Alamitos and that the first day they went to New Canutillo and stayed at New Canutillo the second night. He evidently means that he stayed at New Canutillo the first night and went to White's Ranch the next day and back to New Canutillo. When he went to Alamitos, he went to show where the river was and showed where there were some trees in the early days, and there is still a tree there. He does not know how much a cottonwood tree grows in a year, but it ought to grow four feet or less, in one year. He saw that tree years before the time that he went there with Van Patten and the other witnesses and he saw that tree when he was a boy, and being asked what there is about that particular tree which caused him to remember it, he says, "It was a stopping place where we stopped to get our oxen water". The other big trees, the river has taken them away and only one remains there. The river must have changed about twelve yards to get all the trees but that one. The bank which was left after that flood was the bank which was there before, and has been there always. Down below the river made a new bank where it left the bosque, and the bosque was on the other side. The river came on this side, towards the railroad track which was put there a good many years afterwards. When he was around there, there was no railroad track. The bosque was on the side of the river

where the sun goes down, and the land where that bosque was formed had been on the sunrise side of the river. (This statement is in Question 269, to which the witness answered in the affirmative). He does not know in what year it was, but believes it was after the Civil War, but he believes he can come within five or ten years of fixing a definite date of where the river was. After that bend, the river came this way toward the railroad, and it made another bend. He knew that place when the river first came up and washed the trees out, which was about two months after he left Paso del Norte. Close to Alamitos this way, the river made another bend and then went towards the foot hills on the east side of the river. On pages 248 and 249, he was questioned about bends in the river and his answers, while undoubtedly intelligible to himself, do not, as they appear on the printed pages, give much information. He traveled on the west side of the river about three times when he was 25 years old, coming to Paso del Norte on the west side. He did not know the Amoles road. He traveled in wooden carts. He knew the Muleros Mountains and sometimes went by Piedras Paradas to White's Ranch. He crossed the river by the ford at Piedras Paradas, and the river was right there, not very close, but when the river rose it was, and when the river was down, the channel was near at Piedras Paradas, less than 10 yards off. He was then led to say that he went from Alamitos down the valley on the west side of the river, but he never knew the place called Amoles, and he knew the place called Piedras Paradas when he went by the way of Vado Muleros, going to White's Ranch, but he never traveled on the other side from there. There was a plain road that ran up the valley in dry times, and was a different road from the hill road, and the roads were quite a ways apart, and they could not use that road when the flood was on, because it was boggy. He would travel the hill road, because there would be no road in the

bottom. When the flood went away, he traveled both roads, the one at the bottom and the one on top, and at times traveled over both of them. He did not know the Cobrena Bend, and on the other side of the river he knew nothing though he knew the Muleros Mountains and the Piedras Paradas, and on the west side of the river the road ran in places through the valley and in parts over the hills. The testimony at this point is not very clear, but it would seem that the witness did not go up the valley from Piedras Paradas on the west side, but when he came from Paso del Norte through the mountains to the Piedras Paradas, he came east and crossed the river near White's Ranch. The men who went with him and Mr. Van Patten did not tell him what they wanted, but he was going along showing those places, and they did not tell him anything. They asked him where the river ran, but he does not know in what year, and he had no idea as to the particular time they wanted him to testify about.

On re-direct examination, he said that he did not go from Alamitos down the river to Paso del Norte on the west side of the river, and there was no road to go from Alamitos over to the west side of the river. When he came to the Piedras Paradas, he came to this side of the river and crossed the river at the Vado de Muleros, which is right above White's house, and from the Piedras Paradas to that ford is a long distance. He began to come to the fiestas at Paso del Norte when he was 25 years old, but before that time he had come down many times. When the floods went down, the channel of the river from Alamitos to Piedra de Amolar was over towards where the sun comes up.

On re-cross examination, he said that he was most friendly to the New Mexico side of this case and would rather have New Mexico win than Texas. He wants New Mexico to win, and, (the words being put in his mouth),

the farther he puts the river to the sunrise, the better off New Mexico is, and that would help him individually, and he does not like Texas, because he was not raised there. Today when he left the stand he went to eat and went with Mr. Van Patten, but they did not talk to one another. The river ran very far from the Piedras Paradas and he did not state this morning, that the river when low went right at the foot of the rocks, and it would not help Texas to have the river run at the foot of the rocks, and he has not changed his testimony. Being told in Question 454, that he had said that when the river was low the channel was not more than 10 varas or 10 yards from the rocks, he declares that he did not say so, and that it was not true that in low water, the water was within 10 yards of Piedras Paradas, but it was a way off, and he did not say that, this morning. He did say that the river was somewhat distant from where New Canutillo now is, and it was about 50 yards, more or less, farther west than what it is today and in an entirely different channel, and it would bend this way and that way and this way.

At this point, the Attorney General for New Mexico asked the commissioners to note on the record that the witness whose examination had just been completed, appeared to be quite deaf.

We next have the testimony of

CATARINO BARELA

which begins on page 258.

This witness says that he lives in San Miguel, in the County of Dona Ana, and was born at El Paso, at the place now called Juarez, where he lived until he was 14 years old, and then went to Las Cruces. He is now living at San Miguel in his second year. Before he left El Paso at the age of 14, he had been up and down the

river many times when his father went up to sell earthenware at Las Cruces and Mesilla, earthen-ware which his mother made, and he and his parents were Indians who made the earthen-ware. He went up there to sell the pottery something like five or six times. After he was 14 years of age, he came down to El Paso and went back many times. He remembers when they raised the flag at Mesilla, at which time he was at Las Cruces, and he was then almost a grown man. He usually traveled on the west side of the river. He knows the place called Alamitos, and traveled up and down on that side of the river sufficiently to become well acquainted with it. Alamitos is near the present town of Anthony and there still exists a cottonwood there. He has recently revisited the place. When he first knew it, there were no houses there, but afterwards there was a station there and a man by the name of Jackson, who had a golden tooth, lived there. There are houses all over there now, but not at the very spot where the stage station was. When he went there recently, he could tell that it was the place where the stage station had been by the cottonwood there, but he did not see any signs of the house, except the tree that still existed there. The bank of the river was very near to the house, perhaps a little farther than the length of this room, and it is made to appear that the room is about 40 feet long. From the river near the stage station, the river flowed east and made a bend which was large, both as to width and as to length, and there was an island in between and a cottonwood grove, and the island was not far from the station. At the lower end of that bend the river was near the hills. The lower end of that bend was below where Anthony now is, and from there the river always ran southward near to the hills where the sun rises. Below that place there were some bends, but not so large. In the early years, he knew the Estero Redondo de las Sanguijuelas. A large bend was above that Estero quite a distance, and

the road was quite far from that Estero, which was not far from the river. The island which he described was to the west side from Alamitos and as much to the north as to the south. In the early years he knew a place where there was a lime kiln, and he knew the place called La Bruja, but he never saw anybody there. The lime kiln was near the place called La Bruja, at the foot of the hills, and the road was near to the lime kiln. He knows the place called New Canutillo, and when he first knew the river at that place, the river was running farther to the side where the sun rises. He knew Doroteo Salado who lived at Canutillo Viejo, and his house was near to the river, and might have been 100 yards from there. He obtained water for his house from a spring which ran to the side of the river and the hills were very near that place, and at that point the road ran over the hills. He knew the place called Duraznito and never saw anybody live there. When he knew the place it was a small tree when he saw it and it was a peach tree. At that place the river was about a mile far, and Duraznito was near the hills on the east side. He has known White's Ranch, and when he first became acquainted with the river, White's house was there, but he did not know White. The river was near the house and it was about 25 yards to the river bank, which was a high bank. He knew the Piedra de Amolar below White's Ranch and the river was right against the rock. From Alamitos down to the Piedra de Amolar, the river flowed to the side of the hills where the sun rises. The road from White's Ranch to Alamitos, ran generally on the east side and sometimes when the water was low it would run down and run in the valley, but it was generally on the side of the hills. The old road on the hills could be traveled yet, and he has been over a part of that road recently, and the road went on the hills, because the river did not permit to go down into the branches of the road, and the witness illustrates what he means

by drawing an imaginary horseshoe curve with his finger and a straight line across the curve, which is reproduced on page 265 of the record. This is clearly an attempt to show how the road crossed one of the rincones frequently referred to in the testimony. When he first knew Mesilla, it was on the side of the river where the sun sets, and now on the side where the sun rises, so that Las Cruces and Mesilla now are on the same side of the river. He remembers when the river changed so as to put the two towns on the same side of the river, but cannot tell what year. He remembers when the soldiers from Texas came up the river, and the change in the river was before they came from Texas. Up to the time of the flood which changed the river near Mesilla, there had not been any change in the principal channel of the river below Alamitos. On the east side there was only one road. He never saw any wells in that part of the country. The travelers would get water from the river. At Alamitos was a place where they regularly stopped, and at Anthony. They would get water from there and at Canutillo Viejo, and from there one traveled mostly along the river. Duraznito was one of the regular stopping places. He knew a place called Uranguena, and it was a bosque, but he did not know why it was so called. If he were on the ground, traveling along the course of the old river-bed, between Alamitos and White's Ranch, he says he could point out places he has described, and the river-bed, to anyone. He knows Van Patten and recently went with him to that region of country with other persons whose names he does not remember, and a surveyor. He remembers the names of the Mexicans, who went, and gives the names of Mariano Colmenero, Manuel Ortega, Juan Garcia, and another man whose name he does not remember. He and the others went to show the places in the river and they traveled in a wagon and in places on foot. Between Alamitos and White's Ranch in some few places they came down on

foot. At White's Ranch they came on foot and also somewhat a little above White's house, and they went on foot at the ranch where the spring is. They went to Alamitos on the wagon. On that trip they began at White's Ranch and he has not been there since. He came on the train to Canutillo and from there took the wagon to White's house, but did not go any part of the way on foot until they were coming back. They camped that night at White's house, getting down there about dusk. In the early years, when he first knew the river, he saw the beaver dam, but does not remember just where it was, but he was there once. The Bosque del Gato was from Canutillo Viejo to Canutillo Nuevo, on the other side of the river, and it came right next to the river, and it was a large bosque. He knew it well, because he went with his father there several times fishing, and they caught yellow fish and blue fish, which his father would bring to El Paso, and a part of them they would eat, and some he would sell. He was already a man when he brought timber down the river to this place and was working for Cumplido who lived at Canutillo on this side of the river. They took those things down the river on rafts from the Bosque del Gato, and they brought the rafts with the timber to the upper side of the dam, the one of the mill (pointing northwest), and they took the wood out of the river at the place where the dam was. They brought wood down all the time, in winter as well as in summer. There was an island west of Alamitos, and it was on the east side of the principal channel and was a large island. It was far in width across the island, and the branch on the west of the island flowed to the place called Carrizozo and reunited with the other branch at the end of the island, which was a little below where the town of Anthony now is.

On cross examination, he says he never heard any name for the island except Alamitos. He never went to

the island of Jose Maria Garcia. Carrizozo was on the other side of the river, this side of Old Chamberino, and was near the river and not near the hills. When he traveled on the sunset side of the river, he traveled the road that came through Amoles, which he first saw when he went by there to Mesilla, when he was yet small. He never knew the people of Amoles, as they only went by there. He remembers when the west branch of the river was not very far from Amoles, and they used to take the oxen to water from there. The island was a little to the upper side of Amoles, which was on this side (indicating with his right hand to the east), and the river would go to the other side, where it would join the other branch. He believes that the island was as long as from here to the river towards Juarez, which counsel for Texas indicates would be three-fourths of a mile. Carrizozo was northwest from Alamitos and it might have been one and a half miles. Amoles was farther from Alamitos than Carrizozo. He knew the place called La Cobrena, which was the point of the hills, and the channel of the river which ran to the west was near to La Cobrena, and a little water ran in it, and it was a good fishing place, and when he last went along there, he was maybe a little over 8 years old. He did not know the place called Loma de Arena, but did know the Corral de Trosas, where there was a corral. The river was quite a ways from that place, but he cannot state how far, because he never went to the river at that place. He remembers the place called Alto de los Cuarones, which was hills somewhat sandy. He never saw anybody there. There was a bed of tornillal and the timber was very thick. He knew the place called the Alamo de Naranjo on the side of the river where the sun sets, and the river ran right by that place. He does not remember a ranch place near there. He remembers the Corral de Tapia where there was a corral in which they penned sheep, on high ground. The branch of the river

did not run near there, it might have been about a mile away. He knows the Piedras Paradas and the river was far from those rocks. He was about 7 years old when he first began to travel that road. He first traveled on the west side for some years before he traveled on the east side, and he must have been about 9 years old when he began to travel there. Up to the time he was 14 years of age, he always traveled on the sunset side of the river and until he was a grown man. After he was a grown man he does not know how long it was before he came to Paso del Norte, but after he was 14 years old, he traveled on the sunrise side of the river, before the railroad came, and from 16 to 20 years he began to travel the road more. He traveled up and down the river with Van Patten only that time when he came down to White's Ranch, which was in this year, but he does not know what calendar year, and states that he does not know how to read. His brother told him what year the flag was raised at Mesilla, and his brother was a year older than he. He was then living at Las Cruces and was about 25 years old, and he is now 78 years old. Since his brother died, about three years ago, he has been tallying the years, and before that his brother would tally the years of himself and of the witness. He was then asked, on page 277 of the record, about where he was when the Civil War broke out, and he says that he was at El Paso and had never been away from there, but his further answers show that he was confusing this with the Mexican War, because he says they brought the people here at Dona Ana and the ones from Mexico brought the people, and went to fight on the plains. He was then asked if the battle of Valverde was fought during that war, and he then said in answer to Question 339, "Valverde? Then it was when the Texans came, that battle was with the Texans." He says he had been away from Paso del Norte for some years when the battle was fought with the Texans, and at that time was in Las Cruces and has

never lived in any other place besides Las Cruces, north of here. He said yesterday that he moved to Mesilla, but adds now, they are the same place, and that Mesilla is the same place as Las Cruces. As a matter of fact, Mesilla and Las Cruces are very close together, so that he might well consider them as being the same place. He left Mesilla and went to San Miguel about three years ago. San Miguel is this side of the Mesa Prieta. He talked with Mr. Van Patten only that time. Van Patten had not come to see him before that. He does not know Mr. Chaves, but when Mr. Chaves is pointed out to him he says he knows him, but did not know his surname. He did not talk with Mr. Chaves some days before he went to show the river. The surveyor, Mr. Steen, went along also, and he was the one who spoke to the witness first at the store of Lorenzo Telles in San Miguel, when he only asked him as to his age. Steen saw him only once before he went to show the river. Others who went with him to show the river were Mariano Colmenero, Manuel Ortega, Juan Garcia, and Agapito Marquez. Of the other persons who went Van Patten was the one that he knew, but he does not know the names of the others. At Anthony they took his oath and Don Eugenio, meaning Van Patten, administered the oath to him. This must mean that Van Patten interpreted the oath to him. Mr. Reber was with them, but the witness had no talk with him, but only saluted him and the same with Mr. Chaves who was there. He understood that he was helping Mr. Van Patten and he believes the case must be about those lands, and he understands that New Mexico wants to put the boundaries of the hills on the sunrise side of the river and that Texas is fighting for it on the other side, and he wants to help New Mexico against Texas; and Mr. Van Patten is only a member of a society of Indians, and Van Patten married an Indian, and is to get land for the Indians for a site which makes the pueblo at the pueblito which is called San Juan, below from the col-

lege. It may be said that the college is located near Mesilla. The land runs down toward Anthony, but is above Anthony and is on this side of the river, and witness will not have any of the land, and will get his land at the graveyard when he dies. He has no land now. He has known Colmenero for some years at Ysleta, and the witness belongs to the same kind of Indians as Colmenero. The witness is one of the Mansos Indians, or tame Indians, and Mr. Van Patten belongs to the society of the Mansos, who are all friends with each other and treat each other like brothers, and help each other, even to put over them the last piece of dirt. When he came to show the river, he started from San Miguel and came on the train to Canutillo and met the party at White's house. There were two from below and three from above, Colmenero and Ortega from below. At White's Ranch he saw a monument that was on the brow of the hill on the other side of the river, but he does not know in what year it was placed there. This is a monument on the international boundary under the Gadsden purchase. When he was a boy he did not see a monument at White's house. At that place the house was an adobe house. He never stopped there, and did not know the man White, and was never along there when it was a custom house. There was a ford near there called the Vado Muleros, which crossed from one side of the river to the other. Cumplido, with whom he worked, was a younger man than the witness, and his name was Juan Jose. He had the timber cut and the witness helped to bring it down the river. They got the timber for the rafts from the Bosque del Gato, from the side of the river where the sun rises. The bosque was almost from hill to hill, and the river flowed right through the bosque. The largest part of the bosque was on the sunrise side of the river. Santa Teresa was on the side toward the sunset. There was a ranch there of a man named Almendarez, on the height where the road came

up from Santa Teresa. The river was not near that road. Santa Teresa was a long place and ran up to the bend of Cobrena. In places the river was near Santa Teresa, and in other places it was far. They brought down three trips of timber for Cumplido. Afterward they continued to haul down wood and Cumplido paid them for it. They floated it down the river and they kept that up until the railroad came, and for about six years after the railroad came. Going with Van Patten to show him the river, the first stopping place above White's Ranch was where the spring of Salado was at Old Canutillo. In the early days the spring and the river were there, and the house which belonged to Doroteo Salado at Canutillo Viejo. He remembers Duraznito and there were soldiers and houses there. United States soldiers, and it was a fort on the height next to the hill, before the Civil War, and he knew the place about twice when he came with his father to sell fruit, apples, peaches, and pears, to the soldiers. Soldiers were brought to El Paso, but not under arrest, but came to fight with those at El Paso, and they were Americans and were Doniphan's men. He believes they stayed at Paso del Norte three or four months and then started toward Chihuahua. At this point he was asked if he remembered when some Americans were brought from the north under guard and taken to the City of Mexico as prisoners. This may possibly refer to the expedition from Texas which was captured by Mexican forces at some place east of Santa Fe, and about which Amos Kendall wrote his book, but that was in 1841. Counsel leads him to say that Mesilla at that time was in Mexico and that the Mexican people populated Dona Ana first and afterwards some of them moved into Mesilla, because it was in Mexico, but he does not know how long they remained in Mexico. A few years after that, they said that the boundary line between the United States and Mexico was over here by the smelter, and they built a

high monument there, and then ran a line due west to the monument on the hill, and he remembers when that took place, but he does not remember when they made the monument, and he remembers when they ran a survey along there with soldiers to tell whether the valley was in Mexico or in the United States, and there were Mexicans surveying on one side, and Americans on the other. He remembers the name of Salazar as one of the surveyors, and he came before the witness left Paso del Norte, and he remembers when a Mexican and an American surveyor and the army were together in Paso del Norte, but he does not know where they went to. All this appears on page 287 of the record, and does not give the impression of any clear memory on the part of the witness, as all of the statements were embodied in questions to which he answered "yes" or "no". The house at Old Canutillo was a small house made of poles when he first went by there. The road that was used in dry times was a road that always would go into the same road at the end of the hills. From the house of White was one of the hills, then it would come on the low places until it would go to Piedra de Amolar and then it would go up on the little mountain there. It will be borne in mind that the road in the early days which could not go through the canon, near the beginning of which was the Piedra de Amolar, at or near that point, went up into the hills, coming back to the river near the place where the smelter now is. Above White's Ranch, the road run on the height at the foot of the hills and when the ground was very dry, he would travel on the level land of the valley. The road in the valley in dry times was from one hill to the other. The witness attempted to illustrate how the road went by drawing an imaginary horseshoe bend and then a straight line across the rounding part of the horseshoe, and the interpreter for Texas attempting to explain what the witness had said, in effect explained that the road would come down to

the valley and go across to where the road would hit it again where the roads met. Counsel then, on page 289, questioned the witness as to early floods and how they acted and the changes made in the course of the river.

The next witness whose testimony we will consider is

JULIO RIVERA

beginning on page 290 of the record.

This witness lives at Las Cruces and has lived there for forty years, and lived at Ysleta, Texas, before he came to Las Cruces; and was born at Ysleta. He is acquainted with the valley above the canon, which is above the town, and he was about 12 or 14 years old when he first became acquainted with that part of the country, but he does not know in what year he was born. He remembers a little about the flag being raised at Mesilla, but he was a very small boy, and the boys talked about it. It was after that, that he became acquainted with the river. The first time that he went up the river from Paso del Norte, he went by the road that goes by White's house, and from there on the same side of the river. On that first trip he went to Las Cruces and was there for three or four months, because his father sent him to work, and he was a single man yet. He worked in the farms where they were planting. In two or three months after, he came back home, and stayed at Ysleta until he got married. He would only go out and come back until he got married. He went to Texas and to the Fort at Bosque Redondo, and from there to Texas. After he went back to Ysleta, but before he was married, he went frequently up and down the river as he was already large and they went with herds or carts freighting. Above White's Ranch he usually traveled by the road of White's house, and when he was young he was acquainted with Alamitos, which was a station, and the man who made

it was a man named Scott. The river was about fifty or sixty yards from the huts where the station was. The station was on the east side of the road to the side of the hills. He says that Alamitos was below the town of Anthony, but a little later he indicates that he meant that Alamitos was lower as to height, that it was on lower ground. He says he saw Mr. Reber as they traveled by the edge of the river, and some other one with him. Eugenio Van Patten he knows, and he was with him at that time, and they went over to see if the witness would remember the old places how they used to be. With them he went to Alamitos, and went there in a wagon from Las Cruces, starting about 7 o'clock and getting to Alamitos about six or seven o'clock of the morning of the next day. At Alamitos he could find the place where the stage station had been, and there is there a cottonwood and a willow tree that used to be behind the house, and from there they came down in the wagon traveling a part of the distance on foot, and drove to White's house without stopping, and he could show them the old places driving along in a wagon, because the ruins of the old road are still there, and from the wagon they could see the old places, because they came along the road where the river used to run. In those early years he knew a place called La Bruja, which was a lot of bushy hills, and below there was a bosque and a tornillal, and the road ran over the hill. At that place, when he was first acquainted with it; the river was a little far off from those hills, but not very far off. He does not remember the Estero Redondo de las Sanguijuelas. He knows the place now called New Canutillo. When he first became acquainted with the river, it was to this side of the bridge which is there, that is to the east side. He knew Doroteo Salado very well. He lived at Las Cruces and at El Paso, his own town. He knew of his living at Old Canutillo, where he had a house, and the ruins are still there, which he saw when he went there

with these gentlemen. They got down from the wagon to go to these ruins, because he was not quite certain where they were, but he found the old walls. Salado got water from a little branch of the river that used to run there, and his house was about fifty varas from the bank of the river, and the spring was about fifteen varas from the river. When he went there and found the ruins, the spring was very much destroyed and there was no water in it. He was acquainted with a place called Duraznito, which was a bank of the river, and it was so called because there was a peach tree there. The river runs almost against the hills there and the road was over the hills. When he first knew the place, the river flowed very near to White's Ranch, about fifteen varas distant. Between Alamitos and White's Ranch, the general course of the river was near the hills on the east side. He knows the rock called Piedra de Amolar and it is below White's Ranch. From White's Ranch to that rock, the river run more to this side and flowed a little near the rock. Above White's Ranch up to Alamitos, the road run mostly to the side of the hills, because the river was running near the hills, and there was a large alkali bottom that impeded them from going through it. The road came down off the hills only in that alkali place. He cannot tell how far it was from White's Ranch to Piedras Paradas, but the Vado Muleros was below White's Ranch. The Piedras Paradas were to the west from White's Ranch.

On cross examination, beginning at page 298, he says that his eyesight is somewhat weak, but he can distinguish objects at the distance across the room with his left eye, but not with the other as that is the one that is weak, and he indicates that his eyesight has been bad for only two or three months, and it was not so bad when he went to show the river. He was but a small boy when he first heard about the flag being raised at

Mesilla, but he does not remember how long after that it was that he made his first trip up the valley. They paid particular attention to where the river was when he was a small boy to go by the edge of the river to get water, and that was the only use they had for the river. When his father put him to work at Las Cruces he must have been 14 or 15 years old. He came back down this way a year afterwards and then began to go freighting from Ysleta to Las Cruces. He traveled a road on the east side of Mt. Franklin and said he also used the road which runs up by where the smelter now is, but after he commenced freighting from Ysleta, he went on the sunrise side of Franklin and through a pass in the mountains. He knew Alamitos when he began to freight and he was big enough then to drive a freight wagon, which was years after the raising of the flag at Mesilla. At that time he found a station at Alamitos and a man by the name of Scott. He did not yet have an adobe house, but had a pole hut, and there were many big cottonwood trees around the house. Afterwards some of them were washed away and others were not. Being asked at Question 180, "How many were left", he answered, "I was not curious enough to count them". After the flood took a part of the trees away, it left some. It undermined the ground on the sunrise side of the river and took the trees, but it did not undermine as far as the house or did not get to the house, which was left about fifteen yards in. When he first knew the house, the river was only about forty yards from the house. He does not remember the big island there in the early days. He never crossed the river at Alamitos and traveled on the Amoles road only once, which was when he went away from here and was about 14 or 15 years old. Counting both sides he made only three trips up and down the valley after he was 14 years old, and one was on the west side and on that side of the river there was a watering place at Piedras Paradas, but it was not near,

it was about a half a mile to the east. Piedras Paradas is below White's Ranch. On the Amoles road, the river could be seen, but he cannot tell in what place. He remembers Amoles and the river flowed something like 200 yards from the town of Amoles. He says it did not flow towards the west, but to this side, pointing west. He remembers the bend of the Cobrena and he passed that bend, but did not see the river from that place. He remembers the Alto de los Cuarones, which was a place through which the road came. He knew the Corral de Trosas, and somebody used it and they had a small herd there, and the river was very near to the Alto de los Cuarones, something like 100 yards. He does not rememtber the Bosque del Gato. The river made a bend towards where the sun sets, and then would turn back and run straight, and that turn was this side of Los Amoles, and it went very near to the hills on the sunset side. He went with an engineer and Mr. Van Patten, to show where the river ran in the early days, about two months ago in September. They started from Las Cruces in a wagon and Pedro Benavides and Nicolas Armijo went along. They came from Las Cruces to the river and from Mesquite they came looking over the river. Mesquite is on the other side of Anthony. At Mesquite they had their dinner and the next place at which they stopped was at Alamitos. There were five in that party. There was a surveyor and Don Eugenio and another surveyor joined the party at White's house. They were engaged three days and he was paid two dollars a day. The first night they spent at White's house and the second night the other side of Muleros to the side where the sun rises, and then he changes this so as to state, the second night they stopped on the side where the sun sets at Santa Teresa, which is on the road they used to go to Amoles. He remembers the ranch house at Santa Teresa when he was a boy, and the house was near the old Amoles road. The people there got their drinking water

from the river, which was about 200 yards from the house. There were corrals there which were next to the house. He showed Mr. Van Patten the old ranch place of Santa Teresa and the old Amoles road, and the road went over the hills, and the Piedras Paradas were also a distance from the road. There was another road which came into that road from the Vado de Muleros. The road from White's Ranch and the one which comes from El Paso came together at Muleros, and from that place towards Amoles it made one road, which ran along the edge of the foot hills. He stopped at Old Canutillo and could recognize what was there before, the house of Salado and the old corrals, which were cattle pens built of tornillo and mesquite. He could tell that was the site of the old place on account of the ruins there, because there is no ruins in any other place, ruins of the corrals. The house was east of the railroad. Salado got his drinking water from the river. There was a spring there, but he did not use the spring for drinking water. The spring ran down into the same arroyo where Salado used to get his water, which was the river-bed of almost all the river. It was about 100 yards to where the principal bed of the river was and this slough was between the hills and the principal river-bed, and it was a very large estero, and the water in it was clear water, because there was a strong spring underneath there, and the water raised up. It was about 100 yards from the large river and about 200 varas long. He and his partner showed that place to Mr. Van Patten, and would say where they could go on foot. His companion was Pedro, referring presumably to Pedro Benavidez, whom he has known for forty years, but he cannot say which is older. Pedro remembered more about the old river than he did, but places where he did not recognize, he would ask this witness, who would tell him. He could not tell until now they have told him, what the testimony which he is giving is for, and they told him that

they are fighting about a line, but they did not tell him that Texas is trying to take some land away from New Mexico, and he did not know what it was for. Now he is learning that Texas is trying to take some land away from New Mexico, but he does not know anything about Texas trying to put the line of the river on the west side of the valley, nor that New Mexico wants the river placed along the foothills on the east side of the valley. It might be that the farther towards the east the old river was, the more land New Mexico will now have. Don Eugenio is his friend, but he does not understand what is his interest in the matter. On pages 308 to 310, there is some badgering cross examination which does not elicit anything of importance. He does not remember the old beaver dam, nor the big bend of the river near Old Canutillo, nor the big bend below Alamitos, nor the bend called Uranguena, nor the Bosque de Artesa. He did hear of the Estero Redondo de las Sanguijuelas, and there was water there because there was a high river bank. The main river was east of the Estero, and it was near a river-bed and there was only sand in the river-bed. The river was very distinct from there to the west, and the river flowed about a half mile from the estero, and he could not see the river from the estero. He never went from the estero to the sunset to find a river channel, but they could see the river channel from a high point on the road over the hills. He knew Duraznito and there was a slough there, the same one that came down by Salado's house, and it continued below Duraznito, but did not go as far as White's house, and it reached from above Salado's house down to below Duraznito, and it had the bank of the hills on the east side. It curved when the hills curved and the road was above on the hills, but very near. The bank of the hills would be about as high as a table, about two and a half feet high. In flood times the river would be very wide, but not entirely across the valley. It would be wider in

places than in others, and would get out of the channel of the river, but it would not make new channels. It always had its old channel, but sometimes cut along the bank and washed trees away.

On re-direct examination, he says that he must have been 7 or 8 years old when he heard about the flag being raised at Mesilla, and that he has lived in Las Cruces for about 40 years. When he went up to Las Cruces he was already a man with a family. He knew Nestor Barela at Mesilla, and he was his boss and he began work for him when he was 18 or 20 years old. He was asked, near which of the two places Amoles and Alamitos was the river when he first knew it, and he said, that it ran here to this side, near Alamitos, and it ran very far from the town of Amoles. He says again that the river was near Old Canutillo where Doroteo Salado lived, but the river did not run near the Corral de Trosas and the Alto de los Cuarones, but far away, and he says that if the record indicates that he testified otherwise, naturally he made a mistake. He says that he is about 70 or 72 years old. When he first knew Alamitos, they were building houses there. When he first knew the place there were no houses at Santa Teresa. Santa Teresa was the other side of Piedras Paradas, to the northwest, and it was somewhat far from those routes. He knew that the place was called Santa Teresa from older men whom he traveled with. There is no estero now in the vicinity of the house of Salado. That estero was right at the edge of the hills. He does not remember when the river changed so that Mesilla and Las Cruces were afterwards on the same side of the river, as he still lived at Ysleta. He does remember when the river was running between the two towns and he was already about 25 years old. When he went to work up there, the river was still running between Las Cruces and Mesilla, and he was not at Las Cruces when the

flood changed the river, but at his own land at Ysleta. The last trip he made when he came to his residence, he had to cross the river to Mesilla to say good-bye to Nestor Barela. He was then living at Ysleta, but was working in Las Cruces. He came to Ysleta then and stayed two or three months and then returned to Las Cruces and found that the river had changed. He saw the river near Santa Teresa after the river had changed so as to put Mesilla and Las Cruces on the same side. The river changed its course between the two towns after the soldiers came up from Texas. When he saw the river near the Alto de los Cuarones, it was before the river changed, but that was not a main channel of the river. The principal bed of the river was to this side. The town of Amoles was a place above the level of the river. After the river changed its course, he never again saw the town of Amoles, because the river had taken it down and washed it away. Being asked if he had testified that he would be glad to do anything that he could to help New Mexico, the country in which he lives, he answered, "Yes, sir. I said so, and I would say so even if they hang me," but in answer to a further question, he said that he would not be willing to come here and tell lies in order to help New Mexico.

On re-cross examination, he was asked if he made a mistake as to where the river ran close to Amoles, and he says he did not remember whether he did or not, evidently meaning that he did not remember whether he had made that statement or not. He made but one trip on the sunset side of the valley, when he was a boy and it was the only trip he made when the river came down in the center. The river was very high and they passed at El Paso and went along that way with ox carts, and his godfather was with him. His godfather lived for some years after that, and he himself was about 14 or 15 years old at the time of that trip, and he then saw

the river near Santa Teresa, but he did not see it near Amoles, because there was a bosque there. He does not remember if he said that the river was near Amoles. He saw the river near the Corral de Trosas when he was 15 years old. That was not the main channel of the river, the main channel was over to this side. Along by the Corral de Trosas, that had not been the main channel of the river. It was the bed of the river, but at what time it was the river, he does not remember. There was no water in it when he saw it. It was dry. That was in March, before the high water came down and that was the time that the river was out in the valley. Since he testified this forenoon, he has had a good dinner at his daughter's house, who lives here in El Paso. The only company he had was Mr. Chaves, who takes him from the Court House to the park and back, and his daughter, who takes him from the house to the park, where Mr. Chaves meets him and brings him to the Court House. The witness told him when they sat on the bench, "It is a whole lot of trouble not to know these places here", and he only said, "It is a whole lot of trouble; it is very difficult". Being asked on page 323, why it is wrong for him and Mr. Chaves to talk about this whole case, he answered, "As to this case we have not talked anything". Being asked why not, he answered, "Because it has not been to his convenience to talk to me about it. I do not know why."

We now come to the testimony of

JUAN DE DIOS SAIS,

which begins on page 324.

This witness lives in Chamberino, in Dona Ana County, New Mexico, and was born at Carrizal in the Republic of Mexico, and when he was one year old, he was taken from Carrizal to the Pueblo of Socorro, and when he

was 5 or 6 years old, they moved out to Dona Ana, and from Dona Ana he went to Mesilla to live when he was about 10 or 12 years old. He was not grown up at that time. From Mesilla, he went to La Mesa to live and he was already a grown man at that time. He was born in 1832, and having first said 1932, he asked to be excused a little, because his mind is not very well, and he might make mistakes, because he is a little sick yet. He still lives at La Mesa, or between Chamberino and La Mesa, and has lived at no other. He had a ranch west of Canutillo, or west of Duraznito, and lived there for three years only. He does not remember how old he was when he went there, but he was already married. When he first knew the country, Mesilla and Las Cruces were on opposite sides of the river, and they are now on the same side. When he went to live at his ranch for three years, it was after the river had changed between Mesilla and Las Cruces. He had then been married about three years. He was married in Mesilla, and his wife's name was Josefa Cordera de Sais, and his wife went with him to live on the ranch. His ranch was on the west side of the river. After he was grown up, he traveled sometimes frequently from La Mesa, Dona Ana, and Mesilla, to El Paso bringing corn. On these trips he usually traveled on the east side of the river, and became acquainted with Alamitos. When he first knew it, there were ranches there, and a man named Talamantes had a sheep ranch. There was a stage station at Alamitos. He has known the place and afterwards the station was placed there. He and his brother freighting up and down the river, stopped at Alamitos two or three times, but did not camp there all night, and stopped only to make their dinner. They stopped there for water, and watered their oxen at the river at Alamitos, and watered about 200 yards above the place where they camped. He does not know why it was called Alamitos, but there was a lot of cotton-

woods there. He knows the present town called Anthony, and Alamitos is a little above, almost in the same place. He carries the mails and every day is seeing Anthony and Alamitos. From Anthony to Chamberino, he carries the mail. He knows Mr. Van Patten and Post, who is a surveyor, and he went with them to show them where Alamitos was. There were other persons with him then, Jose Enriquez was one, Catarino Martinez was another, Eugenio Van Patten was another, and Post, and a fat man (and he points to Mr. W. H. Austin, who was present). Faustino Acuna was one of them. The witness showed the surveyor where Alamitos was. They went from the road to show where the station was, but he has not been there for that purpose more than once. He showed them other parts of the river from Alamitos down as far as Muleros. The first time he did not come as far as Muleros, but got sick and turned back from Canutillo Viejo. Afterwards he came down again to show them. From Alamitos, as he came down, he traveled on foot. The surveyor was putting down stakes, and was not doing anything else, but maybe he was writing down the points that he wanted to know. He put the stakes where the witness told him the old river bed had been. From Alamitos downward, he showed them all of the river after he returned, but he showed them then as far as Canutillo Viejo. He was with the same surveyor when he showed the river from Canutillo down this way, and came to the bridge of La Piedra de Amolar. He was able to find the course of the old river all the way down to Piedra de Amolar and says he can find it at any time. From Alamitos, the river flowed southward, and when it got to Anthony, it began to make a turn, and then turned back to La Bruja. La Bruja was a lake which still exists there, and they call it the Heights of La Bruja from where the lake is. The road which he traveled in going up and down the river at the place called La Bruja, was

over the hills. When the river was low they would come down by the edge of the height at the foot of the hill. At the Alto de Las Brujas, the river was something like 600 yards away. The road went up over the hills there when the river rose. He knows the place called New Canutillo, near which there is now a bridge. Where the bridge is now, is where the river ran before. He knew Doroteo Salado, who lived at Canutillo Viejo. Between New and Old Canutillo, the river has changed only a small place from where it used to run before, and that was near New Canutillo. He has always known Duraznito, which is a piece of bosque to this side of the hills, and to the other side there was a large bosque there. At Duraznito, the road ran both ways; when the river rose, they had to go over the hills, and when the river went down, they would travel the road on the bottom. Duraznito was something like 20 varas from the river. He knew a man named White who lived at Muleros. His house was on top of the hill. The ruins of the house and of the corrals that he had, are still there. From the house to the bank of the river, must be about 40 or 50 varas, but he is not certain, because he has not measured it. From Duraznito to White's Ranch, the river made a small bend, and then would straighten out. From Duraznito to White's Ranch, the river was some ways off, but as he has already told, the river made a bend and ran to the place called Lagunitas, and from there it changed straight to the Piedras de Amolar. Lagunitas was some 300 or 400 yards from White's Ranch, and above White's Ranch at Lagunitas, the river was near the hills. The general course of the road from Piedra de Amolar to Alamitos was through the bottom, but when the river rose, they had to go up in the hills. One can still tell where the road runs on the hills, because he showed the surveyor the places where they traveled it. From Duraznito to White's Ranch, when he showed the surveyor where the old river was, they trav-

eled on foot. He remembers a beaver dam in the river, which was about half way from where Salado lived to Canutillo Nuevo. Below the beaver dam, the river ran in two channels, and they came together a little below where Salado lived. The principal channel of the river was the one to the side of the hills, to this side. When the river was low, the water ran in both branches, but the channel on the other side was small and the water run more in the channel on this side. He does not remember when the river changed its course so as to run on the west side of Mesilla, but he knows that the river did make that change, and he saw the work that they tried over there at Acequia Brava to cut it off to prevent the river from running there.

On cross examination, he says that he is now mail carrier and carries the mail every day, except Sunday, from Anthony to Chamberino. Chamberino is above Anthony toward where the sun sets, and he crosses the river in going there on the bridge, which he believes has not been there two years yet. Before they built the bridge, he crossed by the river on a swim. He remembers the big flood year before last, when he crossed the river on horseback swimming with the mail bag over his shoulder. There have always been big floods in the summer time. Once at El Vado, near Mesquite, he had to cross in August swimming. He run the mail there first. He has run the mail nearly 12 years. When he was a boy he traveled up and down on the sunset side of the valley from Muleros towards Las Cruces, but cannot count how many times. From the time that he was 10 years old, he traveled that road. He remembers the old town of Amoles. There was nothing there but the Pueblo and the river that flowed down far from the Pueblo. It was always near Alamitos. There was a church there, made of poles from the bosque. The principal people there when he first knew it were, Juan Simon Enriquez, Jose

Maria Garcia, Juan de Dios Garcia, Jose Maria Enriquez, and others. Garcia lived at a place called La Isla, below Amoles about 300 varas. At Amoles they got water for the town from Old Chamberino, brought by a canal. They did not have water until they made the canal. They opened the canal before they built the Pueblo. He remembers when the river washed away Amoles, and he was then already a man. The people had to leave Amoles and went to the west and built a town called the Old Union. In the early days on the sunset side, he went along on the bottom of the valley and the road was more or less 2,000 varas from the foot hills, in some parts, in other parts less. Going from Paso del Norte towards Las Cruces, there were but two roads and some that they would cut through, evidently meaning cut-offs. One was called the Amoles road. Sometimes they would go through the Muleros mountains from Paso del Norte, and they would cross at Canutillo to the other side. He knows the road that went by the bend of Cobrena, but he does not remember when it was. He was already a man, but he traveled that road since he was a boy. The river did not flow by the bend of Cobrena, but now it is flowing that way. He knew the place called Alto de los Cuarones. It was on the road that went to Amoles. He remembers the Corral de Trosas where there was nothing but cuts made by the floods that would come down from the timber. Ever since he knew that place he never knew any houses, except some old walls at the Corral de Tapia, where they got water from the river, which was near, but he does not know when the river flowed near Corral de Tapia. When he knew it for the first time, the river ran through the bosque and was out far from the Corral de Tapia, in the bosque. From the Corral de Tapia they went to get drinking water from the river, about 300 or 500 yards. He remembers the Loma de Arena, which was not on the river near the river bank. When he went to the ranch on

the west side, he does not know how old he was, or does not remember, but he was already married and had one child. His house was about one thousand yards from the hills on the sunset side, and he got water from a well which he had. There were old river courses or sand bars near his house. At that early time, he never knew the river to run at Piedras Paradas. It ran in the middle of the bosque, and he sometimes crossed it after Navajo Indians who had stolen stock from El Paso. Where he crossed the river was something like a mile from the hills on the sunrise side, or a little less. That was above White's Ranch and below Old Canutillo. He never knew the Isla of Jose Garcia, but he did know the island of Jose Maria Garcia. The river ran to the hills on this side of that island, which was an old island and they cultivated it. He went to show Van Patten the old river last year, and this year also. From Canutillo down he showed them the river in the summer time, and he came down on horseback, and went with them on horseback where he could, but in some places he would leave his horse outside. He walked over into the bosque towards the sunset side, because they asked him the places that he also knew on the other side, but the flow of the river, they had left it behind. On the other side, he showed them from Piedras Paradas up to La Union, the places and their names. He showed them his old ranch house where there are some old trees, and logs or stumps, and the corral of the sheep that he had there. There were large cottonwoods to the west of that place in the early days, and the place was called El Naranjo. Being asked where they got water when they traveled the Amoles road, he says at the Yerba del Manso as it was named, at the place they called El Frijol, and the last time they took water, was on the other side of Amoles. Those places were to this side. The water at places was about 200 varas from the road and at other places maybe 500 varas. It was 200 varas at Yerba del Manso.

At this point it appears on page 345, that this witness was ill with the grippe and his physician said that he should not be permitted to be out of bed for 24 or 28 hours; and then we come to the testimony of

JACINTO PEREA

which begins on page 346.

This witness lives in Chamberino and was born in El Paso in 1849. When he was one month old, his parents took him to Dona Ana, where he lived for 8 years, and then lived at Mesilla for many years, and then went to Chamberino to live, where he has lived ever since. He traveled when a boy to Paso del Norte, and back, the first time when he was six years old, and after that he came when he was about 8 years old from Dona Ana, and on this side only twice, and on the other side when they were living at Mesilla. He has come to El Paso many times, and when he was a boy, he became acquainted with Alamitos, which was a stopping place for travelers. It was a watering place, and they got water from the river. The river from the road was about 25 yards. There was a stage station there, but it was not there the first time he saw that place, but it was there the second time he went by. Below Alamitos, the river made a turn, a large bend, and turned back, and that was the largest bend there is. The first bend from Alamitos would come back to the hills and turn to the Arroyo de Frijol, which was above La Bruja, and on the east side of the river. He knew the Calero de Gualdarama, which was near the Arroyo de Frijol. The arroyo was above the calero. The bend from La Bruja turns to La Artesa, and the turn was to the west, and would give a turn to Corral de Trosas. The Bosque de Artesa was on the other side. The turn that began at La Bruja ended at the Bosque de Artesa, and that was the place where the Arroyo de las Sanguijuelas came in.

That arroyo is on the east side of the river. The Estero de las Sanguijuelas was near the river, and when the river rose, the water flowed into the estero. The river now flows by there. He knows the place called New Canutillo. The river ran above the bridge and would cut over to the Corral de Trosas and come down to that arroyo at Las Artesas, then it would make a bend and come to Duraznito. New Canutillo is at the Estero of Sanguijuelas. When he saw the bridge recently, the river was running under the bridge, and when he was a boy it was an arroyo, and the river run through in a bosque, but after he came down again, when he was larger, the river ran through there then where the bridge is, and it is still running through there. He knew Doroteo Salado at Canutillo Viejo. His house was very near the river, about 50 yards, more or less. He obtained drinking water from the Arroyo de las Nutrias from the beaver dam. He never saw a spring near the house, but his father told him there was a spring there near. The beaver dam was above the house of Salado. At the beaver dam, the river divided into two channels, and the channel in which flowed the most water came down near Salado's house. The two channels came together a little below Duraznito. Salado's house was right at the end of the hills. At Duraznito, the road came over the hills and only came down to get water. That watering place at Duraznito was right next to the hills. At Salado's and at Duraznito, they were two different watering places. He knew White's old ranch, and from White's house to the river bank was about 25 yards. It was a high bank. From Duraznito to White's Ranch, the river ran at the edge of the hills, and the road is still over the hills. The road went up on the hills because the river was there. You can still see many parts of the old road over the hills. The old road ran near the Piedra de Amolar. Above White's house, one would cross to the other side by the Vado de Muleros. When he was a boy he knew the Piedras

Paradas on the other side. The road ran to the east of Piedras Paradas, about 300 yards. Between Piedras Paradas and the river, there was a bosque. As the road came down at Muleros, it struck out to the Alto de los Cuarones, through the bosque. The Cuarones were two brothers, whom the Indians killed at that place. He passed through the old town of Amoles. There is no town there now. It was taken out to the hills, because the river changed it, the river drowned it out. He was already large when that happened, when he was at Mesilla. He does not remember what time, but they used to call it the year of the Texans. The river began to change at that time, and the next year the river changed at Mesilla. He believes that when the river changed at Mesilla, at that time the town of Amoles was destroyed, because the next time that he came down, he saw the town on the top, or on high ground, where the people had moved and built new houses. The only one that lived to the inside where the pueblo was, was Don Simon Enriquez. His house was left there. The first time that he came down the river coming this way, he came at the edge of the Ilano de los Cuarones, where he saw the river. Before Amoles was destroyed, the river did not run at the place of the Cuarones, but it ran to this side. He does not remember the date of the raising of the flag at Mesilla, as he was very small yet. He remembers seeing the flag put up and there was a whole lot of people there and a long pole, and the flag was raised, and his father told him it was a United States flag and that he was a citizen. He has recently been along the old river to show places with Mr. Van Patten and a surveyor. When the Texans came up through the country, he does not remember how old he was, but he was already large.

On cross examination, he says that when he made the first trip on the west side of the river, he believes

he was older than nine years, and before that time he had come down twice on the east side of the river. After his father died he traveled on the other side. After the two trips on the east side, when he was small, he traveled altogether on the west side, and did not travel on the east side until the railroad came. He was 20 years old when his father died. He has traveled to Paso del Norte through the Muleros, and that road went by the Corral de Trosas, and they would get water for their oxen at that corral from the river. The river made a bend and they would go to the river, and when the river overflowed it filled up the arroyos and there was water in them and that road went by the Alto de los Cuarones. They would water a little below Cuarones at the Corral de Tapia, where there was an arroyo, and there was water there, and the arroyo was an old river-bed, and you could easily see the river-bed from the Alto de los Cuarones down to the Corral de Tapia. The old road passed the bend of the Cobrena, which was in the bosque, and the river came a little in. The road came through the bosque. From the place called Cobrena, the river was far to this side, very far from Artesas. The river would make a turn to the other side and the river now runs on the other side below the Corral de Tapia. From there below it is all river. From the Bosque de Artesa, the river made a bend to the Amoles road, but he could not see how near it came to the road because there was a lot of bosque at Amoles. They would water their teams at the acequia and if there was no water in the acequia, in the arroyos from the old river-beds. There was an old river-bed right by the town of Amoles, but that was afterwards. The river was to this side. Years afterwards the river took down all the bosque. He saw the river last at the Cuarones when he was about 19 years old and that was the first time he had seen it there. That would be about 1868, long after the river changed at Mesilla. It is not there now, but it ran

there for some time, and it is now running near the height of Santa Teresa. At the same time it ran by the Corral de Trosas and it made a turn. When he knew the river at the Cuarones, it was more than one thousand yards from the Corral de Tapia, but afterwards he saw it near. Now it runs on this side again. In those early years, the river ran down by this side. On the other side it was all bosque and in after years it kept changing. Now it runs on the other side. When the river went over to the Alto de los Cuarones it undermined and kept undermining until it went clean over to the hills, but a little later he says that he does not know whether it took the same channel to get over there, or how it did get over there. He does not remember when they started to farm up the valley above White's Ranch. He heard it said that Price Cooper went up there, but he never saw the farm. That man dug an acequia. He says he remembers everything he saw at eight years old, but adds, "From those years to this, I knew those places, all through down this way". From this it would seem that what he has been telling is based upon later knowledge and not solely upon what he saw when he was a small child. The long estero which ran by Old Canutillo is the Estero de las Sanguijuelas, which came from the Bosque of Las Artesas down this way and it ran toward Duraznito. That was where they got water for the teams, because down below at Canutillo Viejo the beaver dam stopped it and the water was backed-up as far as Canutillo Nuevo. At Old Canutillo, the river channel when he was a boy, was very near to that estero. The estero was at the side of the hills and the river was to the side of the bosque. At all places he could not look to the west and see the river from the road, because the bosque prevented in places, but where the river would come out then they could see it. He does not know how big were those places where the bosque prevented his seeing the channel of

the river, they were not very large, but as he was very small, he did not take notice. At Alamitos he did take much notice of the river. From Alamitos a turn would begin and it would make a turn by Frijol to the east four or five hundred yards below Alamitos and Frijol was this side of where Anthony now is, and about 500 yards. It went to the west about 400 yards for the turn. The only island he remembers was the island of Jose Maria Garcia which was right across from Alamitos. His father told him that was an island of old man Garcia, but he never went to that island. The river was at Alamitos. The bend of the river was at Alamitos. He remembers the place called Duraznito, which was a stopping place where travelers stopped at the foot of the hill, the river flowed by there. The land of Uranguena was to the other side, but he never went there. It was at Artesas. His father told him that the turn of Uranguena was there. His father was one of the settlers of old Amoles. The river was east of the Bosque de Artesa and the bosque was on the other side. He remembers the Estero Redondo de las Sanguijuelas, and that estero came from the over-flow of the Artesas where the river flowed, and it ran down as far as the beaver dam. It ran by the edge of the hills, and the river flows right in the arroyo, because the river flows now through that way. He does not remember the date that the river changed. When he was 8 years old, the river did run by the Estero de las Sanguijuelas. There were no other houses except the house of White and the house of Pancho Fletcher in Dona Ana. The road came over the hills because they could not travel below. When he first knew the estero it was full of water, because the river would overflow into it as far as the beaver dam. When there was no overflow the river was not in the estero and the water was very clear. The river came into the estero when he was 8 years old, and from that on, he has seen it run by there, and it is running there yet.

When the river rose, it would run into the estero, but when the river was down it would not, it would flow a little. Now the whole river is in that place where the estero was, but he does not known when that took place. When he came by there, when he was 8 years old, with his father, the river did run by there, and it still flows down there. When he went to show the river in recent times, he went with Mr. Van Patten and a surveyor, whom he knows only by sight, and other men, five in number, two from San Miguel, whose names he does not know, but they are Telles, two from La Union, and himself. Of the La Union men, one was Catarino Martinez, but he does not know the other. He has known Catarino Martinez since La Union was established. He first went with Mr. Van Patten to Alamitos in the summer time of this year, he thinks it was in June. From Alamitos they came down the river, down this way, showing them the places. They came down that way as far as White's house and traveled in a wagon. In places they would come down off the wagon because the wagon could not go down. They were two days in that work. He made no statement as to where the river ran to that gentleman over there, indicating Mr. Reber, and he says that he did not know him at all then, but that he was with them and took from him a written statement of what he knew, at Anthony. After he was 8 years old, he had seen Alamitos, and he next saw the river at Alamitos when he worked there. He dug out the acequia for Scott to get that corner of land there at the turn and to populate and settle Anthony. They came to take about twenty rights and dug an acequia there, but they could not get the title because it belonged to somebody else. The land that they were going to water was there where the lands of Mundy are now. They dug the ditch only about two thousand yards and down as far as where Anthony now is, west of where Anthony now is. The ditch filled up. Scott was the one that used it.

The flood came down and covered everything and washed away the ditch bank and covered the acequia all up, and that ended the ditch.

On re-direct examination, he says that he was about 30 years old when he and the others dug that ditch. After he was 8 years old, he has seen the place called La Bruja right along. He is a commissioner of the Refugio Grant, and according to the measures of Mr. Elkins, the line is right there at La Bruja. He has been commissioner of the grant for six years. When he began to be commissioner, he was a little more than 30 years old. The surveyor drew the line from Las Brujas to the hills up a little eastward, but when that survey was made he was still at Mesilla, but a survey was made afterwards by a different surveyor whom they paid to make the survey when he was commissioner, to know the boundaries. After he was eight years old he next saw the Estero Redondo de las Sanguijuelas when he was a grown man and lived at Chamberino, and has frequently seen it since then as he works around there right along. There is a considerable amount of examination at pages 367 to 369, which develops nothing clearly intelligible, but the witness does not seem to understand the questions, nor to make intelligent answers. He finally says that the Estero de las Sanguijuelas is where New Canutillo now is.

Then comes a resumption of the cross examination of

JUAN DE DIOS SAIS

after an interval of nearly three days, beginning on page 369.

His attention was called to his statement that at Duraznito, the road ran both ways from the hills and in the bottom, and he testifies that the road ran in the bottom in the dry times and it was separate from the

hills road, and when they could not travel in the bottom, they would travel on the upper road. Those roads were near, at places about 100 varas and in parts about 20 varas, and in that way they could make turns according to how they thought they could travel best. The valley road ran near the estero on the west side of that estero, which was to the side of the hills and it was like a lake or a big water hole. It was short, about 25 varas only, and was above Duraznito, and the river was about 100 varas, more or less, from the valley road, and this was at Duraznito. The place called El Frijol on the sunset side of the valley was this side of the old town of Amoles, almost as near as Cuarones. Frijol was from the road a little to where the sun sets only. He knows where the present town of La Union is, which is three or four thousand varas from Frijol. Frijol was something like a mile from the place called Cobrena below. Frijol is above Cobrena, and between Cobrena and Old Amoles, and the old Amoles road ran from Cobrena to Amoles, and Frijol was on that road. The river was very far in from Frijol. In traveling the Amoles road they used to get water in only two places, at the Yerba del Manso and almost coming to the place of La Union, between Cobrena and Frijol, there was a watering place where they would come down to water. That water was at the river, but they traveled quite a ways to the water. They would stop at Cobrena and would go something like one thousand varas to water the oxen. That was a thousand varas from the Amoles road. The place known as Yerba del Manso was above the Corral de Tapia. It is just on the other side of the Corral de Tapia. From there it begins. It is a place called the Plain of Los Cuarones, which comes to the Alto de los Cuarones. From the Corral de Tapia begins Yerba del Manso, and from Yerba del Manso begins the height called Alto de los Cuarones, and from the Alto de los Cuarones it comes on to Corral de Trosas. The old

Amoles road ran from Corral de Tapia to the Alto de los Cuarones. The Yerba del Manso was on that road. He believes Cuarones was called from the hills clean down to the river, and from the point of the hills to the river bank was something like two thousand or more varas. They did not cross the river when they took the road on the other side. Being told that he had said awhile ago that he had crossed the river going somewhere, in Question 387, he says that he must have been asleep if he said so, as he had not even mentioned passing by the river at that place. The river flowed, when he was a boy, to the side of the Yerba del Manso, where the sun sets. There is evidently some misunderstanding here, because being asked how near the river went to the foot hills on the sunset side, he says, that when he was a boy the river was far from the hills, and that he told counsel last week that the river was far away from the hills. He says the Yerba del Manso is in a corner of the hills, to the side where the sun sets, and being asked if the river ran right along the Yerba del Manso when he was a boy, he answers, "Yes, to the side where the sun rises", and he got water there for his oxen when he was a boy on the Old Amoles road. He then says that his head is somewhat sick, but he can understand something. In traveling the Amoles road, in places they had to go far to get water, in one place they had to go quite a ways, and in the other places, they went maybe about two hundred or more varas. The Yerba del Manso was the first watering place, and the other was at the Cobrena. At the Cobrena to get water they would go maybe about a mile or more to the east. From El Frijol they did not go to water, but went to the Pueblo. Being told in Question 406, that last week he had said that they got water at the Yerba del Manso and at El Frijol, he declares that he did not say that, and that it is clearly wrong, because the same as he has been saying now he said last week.

Counsel in connection with this contention between him and the witness, in Question 411, asks the witness, if he has talked with anybody since he testified last week, about this case, and he answers, "I have not spoken with anybody. All what you can say of me, during this life time, I, alone manage my own affairs." This is clearly a bad interpretation, but it seems to indicate that he resented the suggestion that anybody could attempt to control him. He is then further asked, if he knows what the case is about, and he says, that he has heard it said that Texas wishes to dispute with the United States about the line where the old river flowed, but he has not heard that Texas wanted to place the line, nor that the United States wanted to place the line, but that both wanted to fix the river where it ran before, and he says that New Mexico maybe has the same interest that Texas has; that he believes the same interest that one has, the other has. None of his friends have shown any interest in the case, but they have the same interest that he has, and it makes no difference to him whether one or the other wins. He does not know why Mr. Van Patten brought him to court, but says they have brought him because he showed them the old flows of the river; and counsel then in Question 423, tells him that some of the old flows of the river, which he showed them were esteros when he was a boy, and he says, No, that he used to see the river flow and there was an estero at La Bruja, right next to the hills, and it is there yet, but they are leveling it up now and they are taking the estero away. Being asked, if that estero extended down towards Canutillo, he says that was another one, but that one went to the height and from the height another one started, and this was only a lake that was filled from the water of the river when the river rose. The road went over the hills when the river rose. When the river was down they would take the road down the valley, and the road was to the side where the

sun rises, and the estero was left to where the sun sets. That estero was 150 or 200 varas wide and was right at La Bruja. When he showed them the river, Post and Eugenio went with them that he might show them the old flows of the river, but they did not name any year when they wanted the place where the river flowed shown to them. He is then led on to say that the river has changed and that at every rise it moves to different places, but he says that, before, the river had banks on each side, and that from the year that the river changed at Mesilla, to this time, is when the river has changed from one place to another, and from that time on, the river has been changing, but that prior to that flood the river never changed, and he says in that time was the first time he saw the river making changes, on account of the high rises coming down. He does not know that the big flood that left the river at Mesilla was the year that the Texans came in, nor whether it was before or after the Texans came. Below Anthony the river has changed, but he does not know the time when it did change, and being asked, if it may have been some years before the flood which changed the river at Mesilla, says that he does not know, and cannot tell what he does not remember, and he can fix no time as to when the river changed this side of Anthony. He traveled up and down there sometimes when he was a man, and when he was a boy, both, and he almost lived around there, but in that time he does not remember that the river changed at Anthony, or this side of Anthony. Being asked what place he showed Mr. Van Patten first, he says that from Alamitos he brought them down on the old river-bed. Being asked if that was the flow when the river was up, he says, that when he knew it, he knew it right at that place and knew it to be there all of the time. From Anthony he went with Mr. Van Patten only to Alamitos, and from Anthony came down this way showing the old river channel as far as Canu-

tillo Viejo, when he went back because he got sick, and then he came again to show them clean down here. He says he has not given any statement until now and once he gave information at Anthony, where he was talking and gave the information looking over a map with him. Looking over the map with Santiago (pointing to Mr. James W. Magoffin, one of the interpreters) at La Union they asked him questions the same as he is now being asked. That gentleman, indicating Mr. Reber, asked the questions and Eugenio, and these other gentlemen here (pointing to Mr. Z. T. White and to Mr. Amado Chaves). He corrects this statement, however, by indicating that Mr. W. H. Austin and not Mr. White was there. He does not know that he signed any statement. He is evidently mistaken about Magoffin, who was employed by Texas as an interpreter, and certainly was not present with any of the representatives of New Mexico at Anthony or anywhere else. There were other witnesses at La Union, of whom he remembers three, Jose Enriquez, Catarino Martinez, and one named Florencio. There were many people there, but he does not know whether they were witnesses or not. Being asked if he remembers when Mexicans from Ysleta were farming up the valley, he says, that probably they were Indians, and he believes he does remember, but he does not remember that people were farming between here and Anthony before the Texans came in.

On re-direct examination he gives the names of his parents Quirino Sais and Juliana Garcia. He says he went on both sides of the island of Jose Maria Garcia, on one side on the road which went to Amoles. At this point on page 380, the witness admits that he was feeling badly and a recess was taken until afternoon, when his examination was continued, as appears on page 381. He then testifies that when the town of Amoles was washed away, being asked where the people went to build a new town, and what was the name of that new town, it was

always called the same Amoles. All that place around there was called Amoles. The new town did have a different name, and it was called La Union, which was built on top of the hills and in a level place. When they built that place the river was near the town, but it is not now near there as it has turned in part in its old place. Frijol was not a town, it was a place or a point where the Grant of Refugio reached, and they placed a monument there, and there were some trees around that place, and they called it Frijol. Right in the same place was the Arroyo de Frijol. When he was a young man, water did not run in that arroyo. He did not know the Arroyo de los Defuntos. When he lived at his ranch on the west side of the river, he had cattle. The ranch was about one thousand varas from the Alamo Naranjo, which was west of his ranch. A whole stretch of country from the hills to the river was called Cobrena, the same as Corral de Trosas and Corral de Tapia; they ran to the river. The road on the west side of the river, called the Camino Paseno, ran through the bosque in the valley. The estero near La Bruja always had water in it, like a lake. At Canutillo Nuevo, there is a part of the old river where it runs in the old channel and a little above is another place where it comes down in its old channel. On pages 382 and 383, there is apparent some difficulty in getting the witness to understand a question as to how the river ran when he was young, from Alamitos down, but finally he says that the river never left that channel and that it has lately left it. He is then asked, if he knew the river to change near the place where White's Ranch was, and he says, he believes it left it at the time when the big flood came down, when it flowed near the hills and left Mesilla and Las Cruces on the same side. When he first knew Piedras Paradas, the river flowed far from there, far to the side where the sun rises. There was a laguna or lake near Duraznito, at the foot of the height of

Duraznito. From his ranch where he lived three years, the river was to the side where the sun rises, but he does not state how far from his ranch. Jesus Maria Gonzales lived at the place they now call Montoya at the edge of the hills, where the lake of Duraznito was. His house was on the same side as the lake. He never knew Cumplido nor heard his name until now. The Estero de la Bruja always ran at the edge of the hills, and the river was right close, adjoining. When the river rose, the road went over the hills, and when it was low they traveled at places they liked to go, or that they could go, and at the Estero de la Bruja, when the river was low, the road was right at the edge of the hills, between the hills and the estero, on the east side of the river. He knew only one road from White's Ranch to Alamitos. Sometimes they would divide in parts when the river was high. They would make cut-offs in parts. It would divide. The road would divide when the river was low, in some parts; it was the same road. It would lead off down, in some parts, it would come down when the road was good, and they would hunt through for places where it was good to go there and then it would go over the hills.

A re-cross examination of this witness begins on page 384. He says that in dry times they could travel best in the valley, but as to the road on the east of the river, he does not know how it was named, and the name of the road he never knew. He knew where Fort Fillmore was, and that road went to Fort Fillmore. Being asked as to the Amoles road and the Camino Paseno, he says that they are the same road, that some name it one way, and others another way, by the other name. He says that he knew Juan Jose Cumplido, but the place named Cumplido he never knew. He says that if they had asked him for Juan Jose Cumplido, he would have said, Yes, that he knew him. Cumplido lived at

Canutillo Nuevo and he knew him there when he, the witness, was a boy. He lived in the valley at Canutillo. He had a cattle ranch, but he did not see any farming there at that time. It is all farming now, but he does not know how long they have been farming there. He does not know whether Cumplido had a fence when he, the witness, first knew that country, and he never saw any fence and does not know whether the place belonged to him or not. There was no fence there when he was young.

On re-direct examination, he says that when he was a young man, the Camino Paseno, or the Amoles road, ran in the valley in the bosque.

On re-cross examination, he was led to say that when there were floods, travelers would take the road over the hills on the west side of the river and over the edge of the hills, but it was always the same road.

We next come to the testimony of

CLARO LUCERO

which begins on page 388 of the record.

This witness lives at Mesilla and he says he is not very well and is taking medicine here. The doctor is giving him medicine. He was born in El Paso, Mexico, and is 76 years old. He was born in 1835, on the 12th day of August, and he lived in Mexico until he was 17 or 18 and then went to Mesilla in 1851, before the flag was raised there and he was there when the flag was raised. When he first came up to Mesilla, he traveled on the west side above Muleros, and came back in the month of October to receive crops from property which belonged to his father, with whom he came. His father sold that property in 1853. He came down each year to receive the crops until the property was sold.

During those three years they came down to the fiesta of Our Lady of Guadalupe every year. That fiesta is on December 12, as appears in the testimony of other witnesses. When the river was high, they came on the east side and became well acquainted with the river on both sides. They took their share of the crops back to Mesilla, the property being rented on shares of which they received two-thirds. He knew the place called Alamitos where there was a bunch of trees, and the river ran by there. He had stopped or camped at that place, and the watering place was a little above Alamitos, but was near. Alamitos was the place where there was a stage station and Scott was there, but the station was not there when he first knew the place. He remembers when Scott, or somebody, built the station, but does not remember what year it was. When the station was established, he was already married. He was one of the men who afterwards were going to settle there and take up some land, a short time after Scott had his station there. The land they intended to take up was below where Scott had his station, and they recognized the line of Texas as being at Alamitos at that time. From the line of Alamitos down, Papin measured out 160 acres. He is the man who was killed at Chamberino. He was not a surveyor, but he took a surveyor from Texas. He and his assistants took a water-right from up the river and dug an acequia, which he cannot find now as it has all been closed up. He has been at that place recently and found the place where the stage station was. They called the place Alamitos, because the line that divided Texas was there. There were alamos there and there was a big bosque to the other side of the river, also on this side, but the thickest bosque was on the other side. He does not know if there are any trees near where the stage station was, but there is one near the bank of Alamitos, and when he first knew the place, the river ran very near to that bank where the

tree now is, and the old bed of the river is still there. From Alamitos the river ran from north to south and a little down it gave a kind of bend and would then turn to the east, where it was near to the ladera of the hills, and from that point it made a kind of bend, but it always flowed from north to south. He has heard Uranguena mentioned, but he does not know the place. He knows the place now called Vinton, and in front of that place there was a short bend. He knew a man named Gualdarama, and in that early time he did not live there, and the witness does not remember when he built his house there. He knew the place, La Bruja, because it was a watering place where they used to water their stock in the river. At that place the wagon road ran by the hills and the hills were near the river. In traveling the road to get water for the stock, they would stop on the road and take the animals down to the river, leaving the carts on the road. He says when he was a boy, he knew the name of the Bosque de Artesa, but he does not remember where it was. He does remember the Estero Redondo de las Sanguijuelas, which was near the river on the east side, and it was above Canutillo Viejo. He knows the place now called New Canutillo, and at that place, when he first knew it, the river was nearer to the hills than it now is. He knows the bend of the river called the bend of La Bruja, which was a short bend, but he does not remember another bend below that one. He knew the place called Old Canutillo and Doroteo Salado lived there on the east side of the river. His house was very near the slope of the hills, and the wagon road went near by, by the hills. The river was very near to the house of Salado, and he remembers seeing a spring above the house from which he, the witness, used to get water. The river was very near to the spring, and the water from the spring ran down to the river. He says that he was one of the original grantees of the Canutillo Grant, but immediately after

says that it was his brother who was in the list of the original grantees of the grant, and an examination of the list at page 3124 of the record, will show the names of three Luceros. This witness could not have been one of the grantees, and probably did not intend to say so, as the grant was made in 1823. He was induced to pay three dollars for some purpose in connection with the grant, but nothing ever came of it. When he first became acquainted with the river, the river ran from New Canutillo into Canutillo Viejo, and from there it gave a turn to the beaver dam, and then forked out in two channels. The beaver dam was above Old Canutillo. The two channels came together near Duraznito or a little below, but he was not very certain. The principal channel was the one behind the house of Salado. He knew the place called Duraznito, but does not know why it was so called. There were bosques all over that place. He stopped on top of the hills and came down to water his stock. The watering place was near the road. He knew Jesus Maria Gonzales, who lived at Chamberino, but he had a little sheep herd at Duraznito, or near there and below. He knew the place called White's Ranch and remembered White himself. He knew the Piedra de Amolar, which was below White's Ranch. The river opposite White's house was near, and the house was on the height of the hills. There were places where the road came down off the hills to the river bottom, but he does not remember how many places there were. He knew the place called Muleros or Vado de Muleros, and they would cross the river below White's Ranch. The river made a bend near White's Ranch, and then ran down to Piedra de Amolar, and was near to the hills on the east side. He knew the Piedras Paradas and he never knew the river there. It was east from Piedras Paradas to White's Ranch, and it was a long distance. He does not remember an old lime kiln above White's Ranch; he was one of the men who went to Alamitos

to take up some land. There were thirty of them, but he does not remember when it was. He was married already and had a family and lived at Chamberino. They did not get any land, because some heirs from San Antonio appeared. He says that the surveyor brought by Papin measured out 160 acres south of Alamitos. The line between New Mexico and Texas was at Alamitos, but he did not see any monuments, only one which could be seen with a spyglass in the mountains.

On cross examination, he repeats the first time he went up the valley, he was about 18 years old and traveled on the west side of the river, and from the west side did not cross the river at any place. He went by the Muleros mountains and came down at Sandy Hill to Piedras Paradas. He went by the Corral de Tapia and by the Corral de Trosas, but he does not remember the bend of Cobrena. The road went by the Alto de los Cuarones. The road was called the Amoles road. He and his father traveled in wooden carts. He knew a place called Loma de Arena, which was named Los Arroyos, and afterward they called it Arroyo de los Muertos, because a cart broke down there with twenty dead people that the Indians had killed at that place. There were seven arroyos that you had to cross, and they were all large arroyos. Some ran from the north and some ran to the east. They were dry. There was no water there. He never saw water in any place they made on account of the Indians, from Corral de Tapia to Yerba del Manso. They would travel the distance from Corral de Tapia to Yerba del Manso on account of the Indians and did not water again until they watered at the Acequia of Amoles. Between Yerba del Manso and Corral de Tapia, there were some sloughs where they could get water, and they stopped there to water the stock. The slough was short and was in the bosque and near to the road. Above Yerba del Manso, there was no other water until they

got to the acequia of Old Amoles. That acequia run down in some arroyos that were named the Isla of Jose Maria Garcia. He did not see any river-bed on the west side of that island, but there were some arroyos there. They got water at the mouth of the acequia and in the farms. He does not know when they dug the acequia that came to Amoles, as it was there when he first knew the place. He does not know how far it was from Amoles to the river. It was in 1851 that he began to travel that way. He knows that he is 76 years old because he was born on the 12th day of August in 1835. When he first went up to Mesilla was in June or July, and the river was high and could not be crossed at any place, but he does not know how near the flood water was to the Amoles road, as he did not see any of it. The river was between Mesilla and Las Cruces, and Mesilla was then in Mexico, and there was a town at Las Cruces. Mesilla was established in 1850 and the people came there from everywhere. When he first went up there, there were very few houses at Mesilla. Mesilla was afterwards changed to be in New Mexico, and in 1854 it was proclaimed that Mesilla was in New Mexico. He did not see a survey of the river, but it was said that it had been surveyed at the mid-current of the river, which was said to be the line. Being asked in Question 270, if he knew any people that were doing that survey, he answered, that he knew all those who distributed the lands there at Mesilla, thus indicating that the survey he spoke of was as to the lands given to the settlers at Mesilla. He did not know General Conde, but had heard him mentioned, nor did he know Salazar, but had heard him mentioned. He heard about men going up the valley to make a survey of the river, but did not see them. He never saw any of them camped at White's Ranch, but the family of White was there. He saw White only once, when he was standing at his door. He had a house that the witness knew, but the witness

does not know what he did for a livelihood. He never saw any surveyors representing Mexico and the United States near Mesilla, but he was told that they had gone up there, and he did not give it any attention. He remembers about Americans being camped in Paso del Norte, and some were soldiers, but he does not know if any of them were surveyors. He does not remember when Doniphan came to Paso del Norte. Being asked, if he remembers when Doniphan came from Santa Fe with an army and went on down to Chihuahua, he says, it must have been at that time when they fought at Mescalitos, but he was very young and does not remember anything about it. (There actually was a battle at the place called Mescalitos.) He saw that army when they came into Paso del Norte, and there were many of them, but he could not tell how many. He believes he was about 10 years old then, or 9 years old, something like that. (He was actually between 11 and 12 years of age when Doniphan came to Paso del Norte.) He does not remember how long they stayed in Paso del Norte; at that time he lived at Los Alamos, which is quite a distance from the old church, but he cannot tell the distance. Being asked how long it would take to walk from the church to the place where he lived, he says, that when the priest would ring the bells for mass, they would leave at the first bell and would reach the church at about the last bell. When he came down to Paso del Norte the first time to get the crops, he came down on the east side and crossed the river at a ford at the place called El Brazito. In the early years big floods would come down every year, and all the corners (rincones) would fill with water from hill to hill, and the bosques would be full of water. When those big floods were going by, one could not tell where the channel was and the water would wash out trees, and perhaps make new channels on account of the big flood, and the river would cut the banks, and would undermine them

where the big current was, and the river would change on account of the undermining that it would make, and the old channel would fill up as it filled up above where he lived, and it would grow up in brush and you might possibly say you could hardly tell that that had been an old channel, but those who had known the old channel might go back and find it again, surely. He was thirty odd years old, when he was married. He first saw Alamitos in 1851, coming back from over there. There was no house at that time there. There was lots of bosque. It was full of bosque over on the west side. There were some trees on the east side. He believes he saw only two big trees and he believes they got washed away, because he never saw them again. In '52 they were not there. He does not know when Scott built his house. After 1854, he came down on the east side of the valley in 1862, to bring some fruit. He remembers hearing of the battle of Valverde. He does not remember the island just below Alamitos, and does not remember when the river changed its course at Alamitos. When they were going to locate land at Anthony, or where Anthony now is, they were going to take the land inside of the Texas line. They were going to take each a share of 160 acres. It was a very long ditch to water that land. He does not remember when he went back to that place after digging the ditch. At Alamitos, the river bent to the westward and then turned back to the east. It made the bend below Amoles. He never saw a bend between Alamitos and Amoles. As the river ran down it would bend over this way (indicating towards the west) and always would turn back to the east. Being asked in Question 374, if there was something about the river that kept it from ever turning west, he answered, "The bosques were very thick", and in answer to the next question, stated, that the river "would come to the east side". At this point on page 410, there are several questions and answers about the river filling up

channels, which are not quite clear, except, on the theory that there was a misunderstanding between counsel and witness. The witness intends to say, that the river would fill up the channels or arroyos with water so that they could not go by there, but had to go over the hills. Being told in Question 384, that he had said that when the river would go to the west the still water would come into the channel, he answers, that he did not say that way and had not talked about the west, and had been talking about the east. He never knew the road that went under the hills when the river was dry, and never traveled it. He knew the Estero Redondo de los Sanguijuelas, which was an estero that the river left there. He does not remember very well if it was there when he first saw the place, but he saw it on the second trip that he made down there. The river made a bend there and the estero was left there. The river made a bend there to the beaver dam. To the west side, the bosques were very thick. To the east side there were no bosques. The river changed a little at Sanguijuelas and it made a new channel towards the beaver dam, and at the beaver dam it forked out in two channels, and the channel that came down by the house of Salado was the principal channel. The beaver dam was near the hills. Once he passed by the beaver dam with lumber in the river. He was rafting lumber for himself and for his father, and is not certain if it was in 1852. He rafted lumber only that year. The timber was cut way up at Brazito. He does not know how many years the river flowed against the hills on the east side of Old Canutillo. The river got away from that hill, because it goes wherever it pleases. Being told in Question 421, that he had said the river had to come back to the hills on the east side all the time, (which by the way he had never said), he answered, that the river was there and as the overflows would change the valley would fill all over with water, and slow water would flow in

the bosques and the river flowed swift water. He does not remember that it was during those floods the river would change its channel, that he would not know the changes. He would come down on the road and see the river towards the east, or to the east side, and he never saw it leave that spot in that time. He did not have any interest in where the river flowed, and has not any now. He knows Mr. Van Patten, but does not remember for how many years he has known him. He thinks he first saw him before the war, but is not very certain. It was at Las Cruces that he knew him, and they are friends. Eugenio Van Patten came to see him about being a witness in this case at Mesilla, with others who were Americans and one Mexican, whose name he believes is Mr. Chaves, and he talked to the witness in Spanish. He asked him if he knew about the river at Alamitos and at White's Ranch. He had no map. He did not mention the bend of Uranguena. The witness says he did not know that bend, and does not know where it is. He mentioned La Bruja, and the witness knew the house of Gualdarama, and the Estero of Sanguijuelas and Canutillo Viejo, and Duraznito. The witness came down the river this side of Alamitos, last week, or rather he has been here the last week. Mr. Chaves and Mr. Van Patten met him at the train and others who were with them. They told him that the controversy was over the property that used to belong to Mexico, and now Texas possesses it. The witness does not know who owns it. They told him that New Mexico claimed to the old river channel. They told him that Old Mexico claimed to the channel of the old river and he says the old channel always came down on the east side before. In Question 474, the witness is told that Mr. Chaves said that that was where the river ran in the early days, which was answered in the affirmative. This is evidently another case of bad translation. It is reasonably certain that as translated to the witness in Spanish, the idea

conveyed was that Mr. Chaves said, was that where the river ran in the early days, and did not convey the idea that he had stated that as a fact. He says his memory is so poor that he does not remember when he came with Post and Van Patten, and Chaves to see the river. In Question 477, he is asked, how it is that he can answer so perfectly as to where the river flowed in '51 and '52, and as to the habits of the river, and yet is unable to tell when he went with Van Patten to show him the river, but his answer indicates that he did not understand the question as he says, "The arroyos are there to show for themselves". The first place at which he stopped when he showed Van Patten the river, was in Anthony, and this side of Anthony they stopped at different places. From Anthony they came down on foot, and then again rode the automobile, and he does not remember just where they stopped. Where they would stop they would look into the arroyos and would see the arroyos, but he stopped at the first arroyo which he found at Alamitos, and it makes a bend this side of Alamitos and from there comes down the first arroyo. The point where it comes back, was at La Bruja, which was where the watering place was, where they watered their stock, and at the first arroyo next to the hills, he said, "Here is the river and it shows there for itself". There are some arroyos all over the valley, but the river run by there, when I used to go by there. From Anthony they walked down this way, but he cannot say the distance. They came down to the edge of the arroyos on foot. (The witness evidently uses the word *arroyo* to indicate the old river-bed). From Alamitos, where it made the bend and came to the hills again, that is where they came to on the east side, and it came to the hills in that place, which he believes was at La Bruja, which was the first place where that bend came back to the east side. He does not know where the river is now west of Alamitos. He is unable to say

how far west of where Anthony now is, that bend went. That first bend came around on the side of La Bruja, above La Bruja and struck the hills to the east. From there it came down south and it made a small bend, but it always would come back to the hills. At the Estero Redondo de las Sanguijuelas, when he went by there, the river made a small bend only and it came to Canutillo Viejo and would turn there. It turned down that way (pointing eastward) and then would turn down this way (pointing westward), and then it would come down by Salado's house. It would go to the west and where that branch led off in that direction (pointing to the west), the branch went off in that direction, and the principal branch came down to Salado's, behind Salado's house, and then it would lead down to the south. That bend went as far as where the beaver dam is and that was where this branch branched off. This was near the wagon road. After that bend, the next bend was at Duraznito, and by Question 531 being asked, if that was the largest bend of all that he has mentioned, he answers in the affirmative, but by the next question it was attempted to make him say, that it was a larger bend than the one up at Alamitos, to which he answers, "Something like that, but I cannot say for a fact. I went on the river. When I traveled on the river, I was very much afraid." He says that he was constantly watching for the Indians. He does not know for certain on which side of the river was the Canutillo Grant. He says he saw the grant which Casimiro Benavidez showed to him and it mentioned it as being to the east side of Canutillo Viejo. All the grant was in the valley, and it did not reach the hills. It crossed the river to the west, and the witness believes Benavidez said it was a league and a half.

On re-direct examination, he says that when Mr. Chaves talked with him at Mesilla, he, the witness, told him where the river ran, because he knew it better than

he did. Mr. Chaves was acting as an interpreter for someone else, for the attorney. The witness says, that he does not know the attorney's name, but he would know him, if he saw him, and being asked to look around, he indicated Mr. Reber of counsel for the plaintiff and says, "This is the man". When he recently visited Alamitos he saw an alamo there at the edge of the river bank. He believes he saw two cottonwood trees, but did not pay much attention. Being asked if he can state whether or not either of those trees was one which he saw when he first knew that place, he says, that he can say on account of the line that they showed him that divides Texas and the old river channel, which is not yet obliterated, there. The surveyor that Papin had with him, showed him the line. With a spyglass he showed them the line as it is on the mountain. (This probably refers to one of the monuments of the Clark survey, which was made in 1859.) The Arroyo de los Muertos, which he had spoken about, he had heard it mentioned as the Arroyo de los Defuntos. He had seen the edge of the island of Jose Maria Garcia from the road, but he did not go into it, and he cannot tell anything about its shape or size. The first time that he came to Mesilla was in 1851, in the summer, and they went every year, he and his father, in the fall to get the crops of corn and grapes, but went only once in the year for that purpose, and they would come down for the wine on the day of Our Lady of Guadalupe, which it will be remembered is in December. The corn and wheat they got before they got the wine. The Americans whom he saw camped in Paso del Norte was before he and his father went to Mesilla, and while they were living at Los Alamos in El Paso. He does not remember who was commander of the Americans whom he saw camped at Paso del Norte, but remembers they were the first Americans.

On re-cross examination, counsel for Texas, as though it were of some importance, sought to have the witness identify Mr. Reber as the attorney for whom Mr. Chaves had interpreted, and that Mr. Chaves was an attorney in the case. Whereupon the Attorney General for New Mexico, told counsel for Texas that if it would be of any benefit to him, he would say that Mr. Chaves is in his employ as Attorney General for New Mexico, and has been assisting him in this case. The witness says that he has seen Mr. Van Patten here since he came, and he has been here all the time. (At this point the plaintiff introduced as evidence, certified copy of the church record of the marriage of Juan de Dios Sais, which appears on pages 424 and 425, showing that Sais was married in September, 1855, at Mesilla.) It will be remembered that Sais is a witness for the complainant, and says that he was born in 1832.

We next have the testimony of

AGAPITO MARQUEZ

which begins on page 426 of the printed record.

This witness says that he lives at La Mesa, and has lived there for some years, and was born in Tome in Valencia County, New Mexico, in 1836, and came to the southern part of New Mexico when he was about 12 years old, and came to San Ignacio, down below here and lived there seven years. From there he came up with his mother and family to La Mesa. He stayed working at White's Ranch and moved his mother and sister up there and worked for White while his mother was at La Mesa. He left her at La Mesa and came back to work, and he was about 18 years old when he began working for White. After he came to San Ignacio and before he began to work for White, he went up the river several times. He worked at farming for White,

but he had become well acquainted with the country between here and Mesilla before he began to work for White. When the flag was raised at Mesilla, he was at San Ignacio, but before that he had passed by Mesilla or Las Cruces only when he came the first time from Tome. He believes he had been here for some time when the flag was raised, because they came down before 1850. He worked for White for four months as a cow man. White had many cattle. When he was still young, he became acquainted with Alamitos, which is above Anthony, but very near to it. When he first knew Alamitos, it was a station and the river flowed down there near, and there was a house there, before be began to work for White. The little house was there when he first came from Tome and nearly all the people who came down, would stop there, because it was a stopping place where they could get water at the river, and the river was very near the little house, maybe about 40 yards. The watering place was both above and below the little house. On the other side of the river there was a bosque, and there were a few trees at Alamitos on the east side of the river. He has recently visited that place and found where those trees were on the east side of the river, and there is still a tree there, a cottonwood. Being asked, if he could or not, find any of the trees which he knew when he first became acquainted with the place, he says there is one right at the edge of the river bank yet, and he believes there is one. That one is very thick and the roots are already above ground, and there are some stumps of the old trees. From Alamitos the river ran straight down for quite a distance and then it made a small bend and then came back and again flowed straight. Alamitos was very near to the ladera on the east side of the river. The bosque opposite Alamitos was a very large bosque and on the other side of the river, at the place now called Anthony, there was always a bosque, and it was all bosque. He knew a

man named Gualdarama, and knew where his house was, and opposite where his house was, there was a bosque on the other side of the river. His house was somewhat near the river, up on the hills. He knew the place called La Bruja. It was a place that made a big bend or corner in the hills, and when the river was high the water would bathe the place and would flow over the place. The water would flow into the bend into the hills. The wagon road ran at the edge of the hills, not very high over the hills. When he first became acquainted with the river, he knew the Estero de las Sanguijuelas. The Bosque of Artesa was on the other side of the river, across from the Estero de las Sanguijuelas. Between La Bruja and that estero, the river flowed down straight, and was near the ladera. He knows the place called New Canutillo. At New Canutillo, when he first knew it, the river ran over to the east. When he first knew the river, everything was bosque on the other side. He knew Doroteo Salado and he lived in a place near the bank, where there was a spring. It was only called Salado's place. His house was near to the river, perhaps a little farther than the length of this room. The spring was about 50 yards from the river. Salado's house was near to the ladera, on the height, and the road went by there. He knew a place where there was a beaver dam in the river, which was up the river from Salado's house. When he first saw the beaver dam, he did not go to it, but he went afterwards, when he was working for White. From the beaver dam, the river ran down in one channel. As the interpreter stated it, the branches were joined together just as soon as it would leave the beaver dam, but in answer to the next question, which is 112, he said, that the two branches came together below Salado's house, a little way. There was bosque all over on the other side of the river. He knows the place called Duraznito, and the two branches of the river came together before coming to Duraznito, and between

the place where they came together, and Duraznito, the river ran straight, when he first knew it. Of the two branches, the one that flowed on the east side was the principal channel of the river. Duraznito was a watering place, and at that time there was a tree there, and the road was over the hills, and people would get to the watering place by stopping the wagons on the road above and then driving the oxen down to water, and at Duraznito there was some bosque and large trees on the west side of the river. Between Duraznito and White's Ranch, the river ran near the ladera, not very near nor very far, but it was near. Between Duraznito and White's Ranch, there were large trees on the west side of the river. He knew the rock called Piedra de Amolar, below White's Ranch, and from White's Ranch to that rock, the river flowed down straight. He knew a place called Muleros, which was near where the road now comes down that comes from California, that is, the railroad from California. When he first knew Mesilla, it was on the west side of the river, and now it is on the east side, but he does not remember when the river changed so as to put that town on the east side. When it happened, he was at La Mesa. He knows that the flood changed the channel of the river, because they took water for their acequia, before the river changed its course, from Picacho which is north of Mesilla, and afterward they dug another acequia farther down. Before the river changed, the acequia of Amoles came out of the river a little below Chamberino, which was farther down the river than the place where he took out his acequia. Between Alamitos and White's Ranch, there had not been any change in the principal channel of the river before the change at Mesilla. When he first became acquainted with that part of the country, he knew a place called Amoles, which was across from Sanguijuelas, and not across from Alamitos, to the west. Amoles was far off from the old river which flowed down on this side. In

the same place where Amoles was is the Pueblito of La Union. In the same place where the houses of Amoles were. When he first knew Amoles, he remembers of only one person who lived there, whose name was Chon Carbajal, and his house was in the town. He does not remember that he ever knew a man named Jose Maria Garcia. La Union is below, indicating that it was not on the hills. He does not remember when La Union was settled, but says they have named it two or three names. It was called first Las Cuevitas, and then it was called La Union, and then it was called Nombre de Dios. He traveled up and down the road on the east side of the river in those early years, and the road ran over the hills, because you could not travel down below, as the river was very near. He says he can show that road now along the hills, and has recently shown it to Don Eugenio and other gentlemen who were along in the same company, and he says that the Attorney General for New Mexico, and the surveyor Steen were there. He does not remember the place called Fort Fillmore.

On cross examination, he repeats that he said he was born in Tome, but he did not say that he lived in Tome until after 1850, and he did not say that the first time he came down this way was after 1850, but when he came from San Ignacio was after 1850. At the time of the raising of the flag, he was already at San Ignacio. At pages 437 and 438, counsel succeeds in confusing him somewhat as to the date when the flag was raised at Mesilla, and when he came to San Ignacio, but he is positive that he was at San Ignacio when he heard that the flag was raised and that it was in 1854. He thinks he was about 12 years old when he came from Tome to San Ignacio, but was old enough to drive oxen and used to work already before he left Tome. When he came to San Ignacio he came on the east side. At pages 439 and 440, there is some discussion between counsel

and the interpreter as to the interpretation of a question which led the witness to say that he made only one trip from San Ignacio up to Brazito, during the seven years that he lived at San Ignacio. He says that when he left San Ignacio, he came to La Mesa, where he now lives, but he does not know how many years he has lived at La Mesa, and he does not remember how old he was when he moved to La Mesa. He says he does not know that the year 1850 has anything to do with this case. Being told in Question 241, that he had stated that he came after 1850 from Tome the first time, he denies that and says it is true that he came before 1850 to San Ignacio, and being asked what he has in mind to fix the date of 1850, he says it is because many men told him that the flag was raised at Mesilla in 1854. He says that he never came from Tome to White's Ranch, but passed by and only once from there. From San Ignacio he says he came down once and then went back there again. From San Ignacio he came to Brazito only and went back to La Mesa, and then back to San Ignacio. He says he traveled also on the west side of the river. When he came from San Ignacio with wagons, he came on the east side of the river and when he went back he went on the same side, and he traveled on the sunset side after he was down in these places where he worked. Being asked what places, he says, here at White's house. He went to La Mesa from San Ignacio and moved his mother and family. A sister of his mother came with her and he left them at La Mesa and came down to work for four months with Mr. White, and from there went to La Mesa where he worked in his own affairs and has farmed there ever since. He does not remember in what year he was married, but he was married at La Mesa by the Justice of the Peace. He was about 22 or 25 years old, because he was already a voter. He was married by Don Eugenio Moreno, who was a Justice of the Peace. He says his testimony has

been that when he came from Tome he came to Alamitos, and knew the place of Alamitos, and he could not come there any other road but that one. He remembers the location of the river of all the times that he traveled and he remembers of the time of the first trip and the river was in the same place at that time, to the side of the hills, to the east side. The river was very near the hills. The bank of the river was near the hills. It was at the place where he saw it there the first time, from the time that he was working there and that is where it was the first time, as he saw it. He does not remember when the river changed at Old Canutillo, but says there were two heavy rises. The heavy rises changed the river to different directions and in different places. It destroyed it so it went on in different places. He does not remember that there were floods while he was at San Ignacio, but he already lived at La Mesa when the two big floods occurred. They were some time apart. Usually the high water comes down during the month of May and sometimes also in June, and in places overflows the valley. In other places it does not. When the flood is very large, the water travels every which way. Some years the floods were very heavy and other years they are not. In the early years, when he was a boy, the floods were much more frequent and, "the river would enchannel in some places" and in some places it would not get out of its channel. (Just what he means by this, is not clear.) White only herded cattle, and he cut willows from the bosque and made a corral out of the willows. His cattle grazed through the prairie, and sometimes would go to the other side of the river. The prairie was to the mountains on the east side. There was grama grass up on the prairie in the hills. Here in the town is where he saw Magoffin, but he did not see a ditch up above White's Ranch on the east side of the river. After the river moved to the west, he saw farms there and in one ranch he knew

a man by the name of Reyes, which from White's Ranch was far into the bosque (pointing northwesterly). (It elsewhere appears that a man named Chapo Reyes had such a ranch and he was the father of Angela Hale, who was mentioned by some of the witnesses as living at the place which her father had.) He says when the river changed to the other side, is when he saw that farm which was then on the east side of the river. The river started to going over that way when those heavy floods came down. Being asked in Question 321, if he does not remember that when he first came from Tome they were working a farm and digging borders between where Anthony now is and White's Ranch, he answers, that there was nothing of borders at that time yet, and that after the river changed from that way, was when they threw up those borders. It should be stated here that the word *borders* as used by counsel and the witness, means in New Mexico, the borders or banks of acequias or irrigating ditches. He says he was in La Mesa already when the river changed to the other side and says that there was not a farm above White's Ranch and this side of La Bruja, until he moved to La Mesa and that it was afterwards they broke those lands there, after the river changed. There never was a farm between White's Ranch and Anthony until after he had moved to La Mesa. There was no farming anywhere there. The river was right next to the hills. He remembers a slough at Old Canutillo in the early days which was near the embankment and it was somewhat long. He says the river left a slough there. When it changed from there it left that slough and he knew the river to be there in that place. In that slough the river flowed. When the river flowed down there was no slough, and when the river left there was a slough. When he first saw La Bruja there was not a slough there, the river flowed down there at the edge, and there was no slough. Coming from Tome, he remembers

well that they stopped at Alamitos and watered the stock and the next place they stopped at Duraznito and not at any place between, and they did not stop again, but stopped the next time here, where there were only a few houses. There was a mill there (pointing northwesterly), and they stopped near the mill of a man called Simon, but he does not remember his surname. It was a new mill when he first saw it. It was on the east side of the river, and he did not know of any other mill, but that one. Coming from White's Ranch they traveled by the road, and came down right to where the smelter is now and above that they came over the hills. Between White's Ranch and the smelter they did not come where the road now is. The road came over on the prairie, at the edge of the prairie, near the river. He went with Don Eugenio and the surveyor to show them the river where it flowed as he knew it when he was a young boy. He says he knew it when he was very young and when he knew it again he was already a man, and he was showing them the river as it existed when he first came from Tome to San Ignacio. This place was called Franklin then and the Fort of Magoffin. Magoffin lived at that Fort and there were soldiers there. When they stopped at Alamitos on that first trip and then at Duraznito, was in the spring of the year, and the floods began to come down, and at Alamitos the river channel was filling up. When they got to Duraznito, the river was not very high yet and the sloughs were getting full of water. When they got to White's Ranch, the channel was already full, but it did not leave the channel yet. As they passed Duraznito, the channel of the river began to get quite full, and they made the turns of the road that came over the hills to avoid the high water. He was not driving a team at that time, but only coming along as a boy. He could drive a team already, but they did not put him on as a driver. They used carts and the carts were cov-

ered with willows, and when they wanted to, they would go inside of the carts. They also put rawhides over them so that they would not get wet when it rained. When he worked there, was when he knew the place La Bruja. Before he went to work for White he knew some of the places he has been asked about, but not all of them. Until he went to work for White he did not know La Bruja, but Alamitos and Sanguijuelas, he did know before, and Duraznito. He went with Don Eugenio to show the river, he believes, last month, in November, in this year, 1913. Van Patten found him in La Mesa, and there were others. One was a man from San Miguel whose name he does not remember. Juan Garcia from La Mesa was another, Rafael Barela was another, and he does not remember the other ones who might have been there. He came on the train, which he left at Anthony, and then they came to White's Ranch and from there they began. From White's Ranch up they showed them the places that they knew. They came to White's ranch from Anthony in a wagon in one day and camped at White's Ranch. Coming down on the wagon an American and a Mexican came in the wagon, but he did not know the American. The Mexican's name was Nicolas, the owner of the wagon. He has not seen the American since. He says coming along in the wagon they did not discuss what they were coming for, because they knew the places and they came only to show the places that they knew where the river flowed. No one told him why it was important to remember where the river ran when he was a boy, but now he knows why because that gentleman (pointing to Amado Chaves) and others have informed him that it is a question between Texas and New Mexico. He said he wanted to know the places exactly where the river flowed, with the object of clearing up which one had the right, but the witness does not know if the river flowed to the east side of the valley the land belonged to New

Mexico, but he believes so. Being asked if he was more friendly to New Mexico than to Texas, he answers, "Surely. I belong over there." But a little later he says that Texas and New Mexico are the same to him and that he has no choice. He did not know that Don Eugenio was working for New Mexico, nor that Mr. Chaves favored New Mexico, and he does not know now. He has known Don Eugenio for a great many years, first at El Paso, Mexico, and then here in New Mexico. Steen was the one that saw him and asked him if he knew these places, but Mr. Van Patten did not see him before he came. Steen did not show him any map or any paper of any kind. Before the railroad came and after the days he worked at White's Ranch, he came down several times, but does not remember how many times and came with carts. When they started from White's Ranch to show the river, they came on foot all the way to Duraznito, and showed them all along the river channel as it existed when he was first there. He says he knew all the place and that is why he showed them all along and they found a plain river-bed from White's Ranch to Duraznito, and that was the river-bed when he first saw that country. When he first saw it, there was water flowing down and he knew all the place. He found a plain river channel because he knew it, how it had flown down. The river is not what he said that he sees now, but the ruins of where it flowed down, there are signs there yet and the river bank where it flowed by. That channel is about knee high, because it has not flowed down now. Being asked in Question 516, if it was by what was left that he could tell where the river used to flow, he answers, "Because I saw it, sir. I saw it, sir." He says he saw it when he came down to work at that place and he saw it also when he came down from Tome. From questions on pages 457 and 458, it appears that when he went along between White's Ranch and Duraznito, Juan Garcia went, and Mariano

Colmenero, and Van Patten, and a surveyor, and Mr. Austin. He and the other witnesses walked along in a body together and the surveyor stayed behind, and the four witnesses went along showing them where the river flowed down as they had seen it. There was no brush, only some small willows and they went along in the place where they had seen the river flowing. On pages 458 to 462, counsel questioned the witness quite closely, but only elicited repeated statements that he and the other witnesses knew where the river flowed in the early days and showed the places where they had seen the river flowing and that no one else expressed any opinion as to where the river had flowed. He says that Don Eugenio paid him $2.00 for one day's time, and he went home on the train which he took at Anthony. The day they left La Mesa they camped at White's and the next day they went home. They reached Alamitos about four or five o'clock in the afternoon the same day that they left White's Ranch and they got home about 8 or 9 o'clock. He says he did not know anything about the west side in the early days, but he knows a few places on that side also, but not as he knows them on this side. He herded cattle on the east side, but sometimes some of the animals would cross to the other side and then would come back. On the east side there were short places where there were cottonwoods and the river flowed down like a snake. To the east side is where the river flowed, only little bends and left no bosque except small tracts on the east side. There was no farming land on the west side, it was all bosque. In that big rise which put Mesilla on the east side of the river is when the river began to change and go over towards the west side and until that big rise it had not changed from the first time he knew it. When the river changed at Mesilla, was the time when it changed to the side of Amoles. He does not know or does not remember when Mesilla changed over, but he thinks maybe it was something

like 1870 or 1880. When he went to Mexico he does not remember who was the ruler at that time, whether it was Trias or Don Luis Terrasas. San Ignacio was a long way below Paso del Norte, a day of travel and a little more. When he came to White's house he was in his eighteenth year and when he went down to San Ignacio he was twelve years old, and he remembers that they were there in 1850.

On re-direct examination, he says that during the seven years he lived at San Ignacio, twice he came to Brazito and La Mesa was not populated yet. He does not remember very well about Mesilla, but when they came there from above there were houses there already. When the big floods come down, the channel of the river would fill up with water and then it would fill up with dirt. After he went to La Mesa to live he came down four or five times and would go clean down to San Ignacio. He came to the fiesta of Our Lady of Guadalupe at El Paso and would go to San Ignacio, because he had relatives and brothers down there. From La Mesa he came to the fiesta about eight times, more or less.

On re-cross examination, at pages 468 and 469, counsel tried to make the witness tell of his having had some conference with Eugenio Van Patten or Mr. Amado Chaves about his testimony, but did not elicit anything except a denial that anybody had mentioned anything to him about his testimony of the day before.

Now we come to the testimony of

LONGINO MESTAS

which begins on page 470.

This witness says he lives at Bosque Seco below Mesilla on the east side of the river and that he has lived between Bosque Seco and Santo Tomas since he

was 17 years old. He was born at Tome, New Mexico, and came to Santo Tomas when he was about 14 years old. Santo Tomas and Bosque Seco are the same town. He does not know when he came from Tome and is not acquainted with Agapito Marquez, nor Rafael Barela, and says they might have come from Tome, but believes they went straight out to San Ignacio, and he does not know whether they came from Tome before he did or after, as he was only about four years old when they brought him down. After he came to Santo Tomas, he traveled down the river to Paso del Norte and was about seven years old when he first made that trip, and in the next year, in November, he again came down to Paso del Norte, and after that he used to come quite often, sometimes every year and sometimes two trips during the year. The first time he came down he came on the other side of the river and returned back on this side. Santo Tomas was then on the west side of the river. When he came down on the west side of the river to go to Paso del Norte, he did not cross the river, as Santo Tomas was on the other side, but when he returned he then crossed the river here at Paso del Norte and went by Brazito and crossed the river from there to Santo Tomas. Brazito was right opposite Santo Tomas. He became well acquainted with the road and the river on the east side, and with a place called Alamitos, and he knows that place yet; it is near Anthony and above Anthony. A stage station was at Alamitos and it was there the first time that he saw that place. When he called there with his father to water, the river was very near to the stage station. He does not know why it was called Alamitos, but there were cottonwoods there, and there are some there yet. He saw it two or three months ago with some people who were Don Eugenio Van Patten, Seferino Benavides, Leandro Benavides, Mr. Steen, Mr. Reber, and other gentlemen whom he does not know well. He came with those men to see

where the river ran in old times. He says he was not of those who came to show them the river, but he came only as a pleasure trip, but he could tell that place was where he had seen the river run when he first saw it, and he told the others that that was the place where he had seen the river when he was young, and after he grew up, he also saw the river run there until it changed over to Picacho. By other witnesses it is shown that Picacho is above Mesilla, and that it was from that place that the great flood came that changed Mesilla to the east side of the river. Below Alamitos, when he first knew the river, it flowed down along hills and made its turns as the hills turned. The hills came right down to Alamitos. From Alamitos up there was bosque and lots of tornillal in the bottom and on the hills, and on the other side of the river it was all bosque and water. He did not know a place called La Bruja in those early days. The only places he heard of when he was young were Alamitos and White's Ranch and the place where Salado had his hut. He does remember the Estero Redondo de las Sanguijuelas, which was on the side of the river where the sun rises and it was very near to the river and when there were lots of water coming down the river it overflowed and filled the estero. He knew the place where they burned lime, called the Calero de Gualdarama, and it was right at the edge of the hills and the river was very near, and in that place it now flows a little near where the Sanguijuelas is, but the Estero of Sanguijuelas is below that place. Between where the lime kiln was and that estero, there was a bend in the river and the river is running there now, but he does not know any name for that bend and until recently he had never heard it called the Uranguena bend. He does not know where the Arroyo de Artesa was when he was young, but it was on the other side, and the Bosque de Artesa was on the other side and that bosque from where it started, extended

to the other side of Chamberino on the west side of the river. Below the Estero of Sanguijuelas, there was bosque on the other side of the river, because the river flowed down at the edge of the hills. He knows the place now called New Canutillo, and when he knew that place, when he was young, the river flowed near where the bridge now is. It could not run any other place on account of the hills. The first time when they were coming back, they called at the house of Salado and there was a little spring there, near the little house, and from there they took water for the road. They used to call that place Canutillo, and the river was very near to the house which was right at the edge of the hills. The road was to the side where the sun rises, and it went over the hills, because it could not go down under the hills on account of the river. Between Alamitos and White's Ranch, the road went over the hills all the time, because the river was down below the hills. He knew the place called White's Ranch and the river was very near to it, and it was on the hill. When he was young, he did not know a rock called Piedra de Amolar. From Sanguijuelas to White's Ranch, the river ran down because it gives a bend in the hills and makes corners in the hills. The river always filled the Estero of Sanguijuelas and as it would come down it struck the edge of the hills and the river ran down straight. It filled the estero and then ran straight towards the hills. From White's Ranch or from Vado de Muleros, the river came straight down to the canon, near to the hills. When he first became acquainted with the river, he knew the rocks called the Piedras Paradas. They are in the level of the river near the sandy hills on the west side. The first time that he came through, he could not tell how far it was from those rocks to the river, but afterwards as he came down again he knew that it was very far. Looking eastward from the Piedras Paradas, he could not see the river, even with a spyglass, and was pre-

vented from seeing it because it was far and there was a lot of scrub timber and bosque. When he first knew Mesilla, it was on the west side of the river and it is now on the east side. When the river changed so as to put Mesilla on the east side, he was in the corner where the river broke through and he was one of the watchmen placed there to watch the river. At the bordo, which means embankment, which had been thrown up to prevent the river coming from Picacho to cut through. All the people from all the towns below were up there to help build the bordo, even the shoemakers. The river broke through at sun rise and it washed through the town of Santo Tomas and the river took along the town of Amoles and they had to build their houses out near the hills, where they are now. The river did no more than to carry it all away. He does not remember very well when that change in the river took place, but it was at the time that there was trouble between Texas and the United States, and he does not remember whether it was in '64 or '65 that the Texans came back from above and went away, but that was in the same year. After the river changed, it broke through everywhere and changed over to the west side and ran near the hills on the west side, and it still flows down there. From the time that he first became acquainted with the river before that change which put Mesilla on the east side, there had not been any change in the channel of the river between Alamitos and White's Ranch.

On cross examination, which begins on page 478, he says that after that change, the river flowed down by Santo Tomas and Chamberino, but it continued to flow down by Alamitos for some time, but not all the water. Some of the water flowed on the other side. At Alamitos there was a place that was called La Isla, the island, but to the side of Chamberino. The island was below Chamberino, but if there was any island this side of

Alamitos, he never knew of it. Being asked if the river did not somewhere near Alamitos divide into one branch and go over to Amoles, he answers in the negative. After the big flood, the river flowed by Amoles for a certain distance and ran right through the houses. He came there in a canoe to take out some stuff which belonged to the store there, and below it made a channel. It made a channel just below Chamberino, where the river ran down by the hills, and at La Union is where that channel is. Being asked in Question 132, if Chamberino is south or north of Amoles, he answers, "It might be south, but it might be north of it, but at the same time, it is Chamberino", and it is to the side where the sun sets and was moved to the edge of the hills. He believes that it is a little farther up than Anthony. Being asked in which direction is Amoles from Anthony, he says he does not know, but Amoles is above and Anthony below, and Anthony is this way. Old Canutillo is down below and Anthony is away up, away above. He knows where the river is between here and Juarez, from the ford at Juarez up. From the ford right where the bridge is, he knows because he traveled up that way. The place where the ford was and where the bridge is, is not far from here and not very near either. The station where he left the train is not very far, nor very near, but it must be nearer than the river is. In that year when the flood put Mesilla on the east side of the river, was when the Texans came from above and there has not been any flood since as big as that one. It will be remembered that other witnesses say that there were two big floods, one in 1862, and at that time the Texan forces were at Mesilla on their way north, and the other flood which was the more serious one was in 1864. But while the Confederate troops were turned back at Apache Canon, a little east of Santa Fe in 1862, I believe there is no record of when they got back to Mesilla or El Paso on their retreat from New Mexico. He was in his

fifteenth year when the river rose so high, as his father and mother told him, but his certificate of baptism was lost. He says it was when the Texans came back that the bordo was thrown up and the river broke through. When he was young, every year, in the month of November, he would come down to Juarez, and when he made the first trip on the west side, he might have been about nine years old. He came with his father with carts with salt that an uncle brought from New Mexico. There were more Indians in the country in those days than there were other people, and at times they were good and at other times they were bad. They were bad all the time when they were making the trips. He does not know whether the people with whom he traveled were afraid of those Indians, though he believes they must have been afraid of them. He, himself, was never afraid of the Indians and paid no attention to them, and spent most of his time locating the river (in the language of the question asked), because he got water from there and watered the oxen there. On the west side he would get water for his oxen at Yerba del Manso, but the river did not run by there as it was far this way and one had to go on horseback to water the oxen. He did not get water near the side near the road and there was no water on the road until you got to Amoles in the acequia which came from the river and in the esteros which were in the bosque, but they were far. The acequia was the nearest water, "that place that they were calling, a little while ago, the Estero de Artesa", which was an estero that they crossed in troughs. It may be said here that the word *artesa* means a trough. That estero was not very large, but it was deep. He does not know how long it was, but he was there for six months with sheep for his father and camped at the town which was called La Isla, and the esteros were below. They used to go up and down the esteros for pleasure, and they used to fish there. There was not clear water in the

estero all the time, because when the floods would come down, it would fill up with muddy water. There was water there all the time and fish not all the time, because when the big floods came down the water would take them out. While he was there, there was always water for the stock. He does not know how many of those esteros there were, but knew many of them clean up to Santo Tomas. Question 190 and the answer are not quite intelligible, but the answer to Question 191, states that the witness never knew the river there since he was old enough to reason. Those esteros were not near the foot hills on the west side, but they were very far from the old road which he traveled over to the isla, to the side of the river. The isla was far from the Amoles road. He believes the people who lived at La Isla were already dead, but he was in the house of a man named Aniceto, and the lady lives at Anthony, and he stayed at the house, "because the Indians would take a fellow, and would strip a fellow off and would take the sheep away from him", but in answer to the next question, he reiterates that he was not afraid of the Indians and is not afraid of them now. That island was known as the Island of Jose Maria Garcia. Being asked if there was an estero on the sunrise side of the island and one on the sunset side, he said, that the one that was to the sunset side he never saw, but the one on the sunrise side was the one he knew. That had the fish in it and that is where he used to water. He does not know which way that estero turned as he never went down to the lower part of it. At this point on page 483, counsel tries to get the witness to say that there were many esteros from Amoles down this way, but after having said that at Santo Tomas and at La Mesa there are lots of esteros, he finally says that from Los Amoles that was the only place he knew an estero. He does not know the bend of the Cobrena, but that is the way they call it now near the height where the Indians

killed the Cuarones. He says that he does not mean to say that the bend of the Cobrena was not so called in the earlier years, but he did not hear of it at that time. He did hear of the Corral de Trosas which was a ranch where there were cattle, and there were corrals there. There was no water near, it was away far. He knows where the heights of the Cuarones were, which was near the place they call La Cobrena. He did not see any water near either of those two places. Being asked if he could travel all the way from Paso del Norte to Amoles on that road and find no water, he answered, that at that place there was no water and they had to take water from the Yerba del Manso and the place called Pelear near Piedras Paradas. The river was away far from Piedras Paradas and they had to go on horseback to the river and bring it in gourds. The Piedras Paradas were at the bottom of the hills and when there was plenty of water, they were almost covered but they had to travel on top of the hills when there was a great deal of water and the whole valley was full of water. He says it might have been three miles, more or less, to the river to the east and when they camped at Piedras Paradas, they used to take the oxen to water; they went about three miles due east, more or less, but Vado Muleros was the nearest place to which it might have been about two miles, but there was a steep place there and there was no feed there. There was not a road up through the center of the valley, but it was a cut-off. When there was not much water and the river was low, that was the cut-off, they could travel that way then they had to go over the hills. Being asked where that was, he says, at Piedras Paradas, at Pelear, at Yerba del Manso, where the road would climb again to Corral de Trosas. At Yerba del Manso they used the water from the river and he says that is the place which he said was about three miles, more or less, from the river. He says that he does not know what a mile is, but he

does know that three miles make one league, and it might have been a league from Piedras Paradas to the river, more or less, adding that it is only calculation. This is a literal translation from Spanish and should be an *estimate* instead of a calculation. And from Yerba del Manso, from what he has said, it might have been also about three miles to the nearest water, more or less. Question 248 is, "From the road you were traveling in the valley?" To which the answer is, "No, sir. It was on top of the hill." There is at this point some evident misunderstanding as the next question was as to whether the road by Yerba del Manso was upon the hill and not in the valley, to which the witness answers, that it was in the valley and not in the hills, but there was a cut-off there and he says he is trying to describe the cut-off that went to Corral de Trosas and Corral de Tapia, where there was not much water, and that cut-off was a part of the Amoles road. He was then asked if there was another branch of the Amoles road which went through the Muleros mountains, and he says, Yes, sir, in the upper part in the hills and that the valley road joined that road at Los Medanos near Canoncitos in the mountains at Puertecitos as they are called now, and from Puertecitos it ran toward the side of the rising sun, and turned toward Piedras Paradas, and being asked if it crossed any old river channels, he answers, "No, sir; the road used to come down to Piedras Paradas and the other one to Muleros and another one that was coming along straight along the hills." This does not seem entirely clear, although it probably was to the witness. It may be understood, however, if we bear in mind that Muleros is the name for a stretch of country along the river on the west side, both above and below White's Ranch and from other evidence it seems that when travelers from Paso del Norte went by the mountain road through the Canoncitos, the road came down to Piedras Paradas and from there, there was a road to the Vado

Muleros, where they could cross the river near White's Ranch and the road that came straight along the hills, was the road coming towards Piedras Paradas from Santa Teresa, which was north of that point. He is then asked about the time of the conditions about which he is talking, and he says he thinks it is from '46 to '50. He answers, "I remember well, thank God, what passed from the time I was seven years old". He says he thinks he was seven years old in '48 or '50, although not very sure as he has not his certificate of baptism. He says his father and mother told him that he was 15 years old when the river changed Mesilla to the east side, and counsel suggests to him that he has his dates a little mixed, which he admits may be so, but he says he does not know and has no desire to mix things and is only trying to tell the truth. It seems certain that he makes some mistake about his age, as the flood which changed Mesilla to the east side of the river, according to all the evidence which attempts to fix the date, was in 1864. He says it is very certain that there was never a change in the channel of the river between Alamitos and White's Ranch until that big flood which broke through the bordo at Mesilla. Being then asked if he saw the river channel touching the edge of the hills at La Bruja, he says that he did not know La Bruja. Being asked in Question 273, if he did not, on the previous day, tell where the river ran at Duraznito in the early days, he says he thinks not because he does not know where Duraznito was. He further says it is not over three months since he first heard the name La Bruja and Duraznito also. Being further asked if he came down on the east side of the river any more after the big flood, he answers, "All the time". After that flood he came down to El Paso in the same year in the month of November. A branch of the river had cut off by Chamberino and came back to the arroyo called Sanguijuelas, and after the big flood he still found the river

at Sanguijuelas, and a portion ran by Alamitos and a portion the other way, where it went to the town of Chamberino. In Question 285, he is asked how the river running by Alamitos could go to Chamberino, and he says, the same as it did at Mesilla and Las Cruces and Santo Tomas, and another portion went between Mesilla and Las Cruces, all of which places are north of Alamitos. He thinks that the river never left Sanguijuelas. Every time he has passed by, he has seen it, up to the present time. After the flood, he visited the place every year. He had his family at El Paso and used to come here in the month of November. Being asked, if he found the river every year running by Sanguijuelas, he says, some years he did not because there was no water. The channel of the river is there both the old and the new, and the river makes a bend from where it went to Amoles, that is it came from Amoles to Sanguijuelas, running from north to south. When the river was running from Amoles to Sanguijuelas, he was about 18 or 19 years old. He was married when he was 17 years old, at El Paso. When the Texans came back, he was only 15 years old. He does not know what battle the Texans had with the northern people and did not hear of the battle of Glorieta, but he did hear of the battle of Valverde from soldiers who came from there, by Ramon Salazar and other soldiers who took part in that battle. After the Texans had gone back to the east from here, he married and was 17 years old when he married. Sanguijuelas is not very far from where the wagon road was. The river was very far from Piedras Paradas in the early days and he could not see the river from Piedras Paradas, not even with a field-glass, and if he had had a field-glass, he could not have seen it on account of the bosque and woods, and standing below the Piedras Paradas you could not see the foot-hills on the east side of the valley, because the woods and trees were very high, but on the road above Piedras Paradas

you could see across the valley and could see the hills on this side, even sitting down, but could not see the channel of the river. In traveling the wagon road from Alamitos, this way after the building of the railroad, he is asked, if he can still find the river at Sanguijuelas, and he says, "It has always been there, and is there yet". He says he is sure that the river has been there every time that he has seen it and it is there yet and it was there when the railroad was built. The railroad grade has filled up that place, otherwise the Sanguijuelas arroyo would be full yet. There is a bend there and when the water overflowed it would fill the arroyo up, but the water always ran straight to Canutillo. At Sanguijuelas, the river was right where the railroad is and there was the main channel of the river, and since the railroad was built, according as he has seen, it remained there. At Canutillo Viejo, when he first saw the river, it was against the hills on the east side, but it is not there now. He does not know where it is and he has not seen it. He says when he went to Canutillo to show where the river was, he did not go to where the river is now running, but went to where the river used to run formerly. He saw a bridge at New Canutillo, and the river is at the same place and has not changed there from the edge of the hills. At Salado's house, the river ran in the early days very near the house. Thirty or forty yards and not over fifty from the house to the little spring near the river. At the place where the spring was the river does not run now where it did when he first knew it, and he does not know where it runs now. The river did not run perfectly straight between Alamitos and Sanguijuelas. There was a bend at Sanguijuelas and another at Canutillo. Beginning at Alamitos, the first bend turned towards Anthony and made a bend to the brick kiln, and from that to the place that they say is La Bruja. At Anthony it formed the first bend close to the hills on the east side, according

to the bends of the hills. If the hills had been straight, he thinks, the river would have run straight. He does not know why the river stuck so close to the east hills, but he does not ignore it. It seems to him that the only thing that kept the river from going farther east was the hills projecting. Being asked, if he knows of any reason for that, he says, No, but he has seen the river work that way at several places. He never saw it work to the west until it cut across, until it changed up above. Being asked, about the old house of Gualdarama, he says, that he does not know where that house was. He is then asked in Question 377, if he knows where Duraznito was, and he says, with some apparent irritation, that he has said more than ten times, that he does not know. He is then asked, how far it was from the road over to the island of Jose Maria Garcia, but he says that he cannot estimate the distance, although he was familiar with that island, because it has been a good many years and you cannot well remember after many years have passed unless you go and see it. The river ran by the east side of that island and when he herded sheep, the river was there and was close to the bluffs on this side, or the hills. The island of Jose Maria Garcia was on the other side of the river. The river did not pass very near the island, but when there was plenty of water, some water ran there also. Finally they put a bordo there so there was no island. There was a settlement of 18 or 20 families living there on the island on the edge of the hills. They made a dam above in the river, which lasted until the big flood destroyed everything and destroyed Chamberino also. They put the bordo or dam there to prevent the river from cutting the island on the west side so that the water would run in the river and not get into their farming land. Counsel then, in Question 393, asks, "Then there was a channel on the west side?" and the witness answers, "A ditch of the Amoles was there". There was

not a channel on the west side, but the river cut there when it was very high. The main current of the river was always on this side of the island, only when it overflowed it went on the other side. There were houses on the island when he first saw it. After the flood there was no island, it carried everything away. The valley was full of water from one side to the other. During the month of May every year, the river overflowed. There were big floods every year which would last until October, but the one that changed the river at Mesilla was the biggest ever known. From La Mesa and below, it would always fill with water, but when it subsided the river would always take its channel on this side. Sometimes the floods would last from May to October and would fill the whole valley from one side to the other and during that time when the flood was highest one could not tell where the river-bed was. The whole thing looked like a sea. Counsel here on pages 497 and 498, tries to lead the witness to say that when the water was high, it would wash channels in new places, but he declares that there was only one channel between Mesilla and Las Cruces and he says that he does not know that the water would get out in the valley and cut new temporary channels, and that he did not see them. On page 498, is an interesting bit of cross-examination which reads as follows:

"Q. 424. At White's Ranch looking west to Piedras Paradas, how far are these rocks from the road at White's Ranch?

A. I cannot tell. It is far. Quite far.

Q. 425. Make an estimate.

A. I have very poor powers of calculation.

Q. 426. Would you say it is a half a mile?

A. I cannot tell. But I can say that I can go and point them out. I can say that better."

This is a definite illustration of the correctness of what has been hereinbefore suggested as to witnesses going on the ground and pointing out things with which they were familiar in early life. Being then asked to whom he showed the river, he says that he came with Mr. Steen, with Don Eugenio, with Mr. Reber, with Seferino Benavides, Leandro Benavides, and others from Dona Ana whom he does not know. He came with them from Las Cruces to Canutillo Nuevo, and from there went to Canutillo Viejo and Canutillo Nuevo was the first place he showed the river. From New Canutillo, after the commissioner from Texas arrived, they went to Corral de Trosas. He does not know who was the commissioner from Texas. This was not long ago, but he says he does not know how to write and does not keep any memorandum of anything. He thinks it is not over two months. From both sides, the commissioners said they wanted to know where the river was. He was then asked why they went to Piedras Paradas, and he says, that they did not go there. They went to Corral de Trosas and came back to this side again. They went there because it was desired to know whether anyone knew what the Corral de Trosas was. He was not looking for a river over there because he had the river found here, and from Corral de Trosas they turned back to Canutillo Nuevo over the same road and slept there in the same camp, making two nights at New Canutillo. The next day they went as far as White's house and found the old river all the way down, and walked along in the channel of the old river the whole distance. Some, not all of them. Some went on foot and some in a wagon. He went on foot and Mr. Steen and others. Some of the others were going along the road. The witness walked along in the old channel and Steen followed him. The witness was showing him where the river ran in the early days, but he, the witness, did not know his, Steen's, business. Being asked if he could easily trace it right

down to White's Ranch, he answers in the affirmative, and says that he was traveling right on it and could do it again, and being asked if the channel is there yet, he answers, "In parts, yes, sir; and in places, no". In parts you can see the bottom of the channel and in other parts you can find traces in the sand. Being asked if he could find the east bank all the way down, he says, that he can see it all the way up to his home, all the way up to Las Cruces, and he can follow it even up to there. Having his attention called to them, he says that he saw some brick houses above White's Ranch and that the river-bed used to run there right where those houses are, but the old bottom of the river he cannot see it there, but he is able to tell that the river ran there because he saw it with his own eyes. At the place where the brick houses are, the channel is obliterated, but farther up you can see the old channel, but it has been filled up below. It is level this side of the brick houses. He says that he showed the place where he saw the river run formerly to the commissioners and being asked near what point he knew it to have existed in the old times, and did he find the channel of the river, and he says in all the places from Alamitos to here. Some of those who came along did not know anything and they were two or three who came from Dona Ana, but as he has said, he did not know them, and hence cannot tell their names. He says he was rather sick, but was charged by the commissioners to come with them and he had to come. He says that Don Eugenio was the commissioner for New Mexico, but he does not know the name of the man who was commissioner of Texas, and he does not remember whether he has seen him since or not. He says that Steen, Seferino Benavides, Leandro Benavides, and others from Dona Ana walked in the old channel with him and the younger Benavides, Seferino, knew about the river, but the older one, who is very, very old, did not remember the places. In portions Don

Eugenio walked with him, and in other portions went in a wagon. He says that Don Eugenio was an old settler around here and at Ysleta, and being asked in Question 500, if he could tell the witness all about it, the witness answers, "He could not tell me. He did not know. He did not know even where he was. He was not showing the places to anybody." In Question 501, it is suggested that Van Patten did not know the country in the early days and the witness says he may have known it, but very poorly from what he could see. The witness gave a declaration at Las Cruces afterwards and Don Eugenio was there and Amado Chaves, and the two Benavides and others whom he does not know. The Texas commissioner was not present. There was a man writing there, but he does not know who it was. He thinks no one administered an oath to him, and Benavides also made a statement but not under oath. He thinks he signed the statement afterward. After he went to White's house, he stayed at home that night, taking the train to go there. Being asked when he went to Alamitos, he said they had already been there. They stopped there coming this way and when they crossed to the other side they had already been at Alamitos. They came to Anthony on the morning train and from there they went afoot to Alamitos and then from Alamitos they came to take the wagon and went to Canutillo Nuevo and there they slept. Another day they went to Corral de Trosas and in the evening came back and in the same camp slept that night, and next day they came down below after breakfast. At noon were back there again and when the train passed they went home. It was not quite a year since he had visited Alamitos. There is no river at that place now. He does not know how far is the river from the spot where he first knew it, and says the river has cut over away, near Mesquite, very far near Mesquite, and being asked when it cut out that way, he says it is since it came between Mesilla and Picacho, many years,

ever since it came between Mesilla and Picacho. He was able to find where the river ran at Alamitos because there are cottonwood trees there and the deep channel, and some of the trees are there that have always been there. There is one large tree there now and the others are not large. That big tree is one of those that he knew when he was a boy, and he believes he is not mistaken about that. He refuses to estimate the height of the tree because he cannot say a thing that he does not know, and being asked why he says that it is the old tree, he says, that it is because he has seen it with his own eyes, and he will say it yet. When he was a boy the tree was thinner and it was not as tall as it is now, but he does not know how much. He is then questioned about how fast cottonwood trees would grow, after having been led to say quite positively that the tree is one of those which he had seen when he was a boy, and he says, that he has not noticed how much a cottonwood would grow in one year, and that it depends on the soil, and he says the soil at Alamitos is not very rich. There is a good deal of alkali there and this old tree is about to die. He is then questioned about what he was paid for his work, which appears to be two dollars a day.

On re-direct examination, the witness says that the houses on the island of Jose Maria Garcia were below Amoles and nearer to the east side than to the west side and that the estero was on the west side of the island and was formed when they stopped the water so that the river might not come into the island, and when the water ran into the estero, it was muddy. When there was no flood the water in the estero was clear. He says further that after the big flood which destroyed Amoles, no houses were built again at that same place, but they took them over to the hills and much less on the island. He says that his father was Cristobal Mestas and his

mother Juliana Benavides, and they both lived at Tome. His wife's name was Marcela Herrera, and he was married at Santo Tomas in the church by Father Baca of Mesilla. His wife's parents were Pedro Herrera and Cleta Provencio, and his wife was from El Paso. The commissioners who came when the witness came down the river, said they were commissioners and they talked Spanish very well. Don Eugenio told him that he was a commissioner, and he was the companion of the other one that was the commissioner from here. When he was a watchman at the bordo thrown up to keep the river from running west of Mesilla, he was not very large nor very small, but they used to tell him that he was 15 years old.

We next have the testimony of

JOSE HIDALGO

which begins on page 511.

This witness lives in Dona Ana and is 80 years of age, and was born at El Paso, now called Juarez. He left El Paso when he was 13 years old and came to a place called Aguapa in Texas, near Magoffin's Fort, and lived there 18 years. While he was living there he made several trips up the river to Mesilla or Las Cruces. He remembers the raising of the flag at Mesilla while he lived here. He did not go up the river as far as Mesilla before the flag was raised there. The first time that he went to Dona Ana, he went to see his sister who lived there. He then says that he does not remember whether the flag was raised at Mesilla before or after the time when he went to see his sister. He was then 16 years old and traveled on the east side of the river. After he lived at Aguapa eighteen years, he went to Dona Ana and has lived there ever since, for 48 years. Before he went to Dona Ana to live he made many

trips up and down the river, always on the east side. He traveled sometimes on horseback and sometimes with carts, and became acquainted with Alamitos, which was a stopping place or a watering place, and the river was very near, and was rather far from the hills, but was near the ladera that leads up to the hills. In those early trips he knew a place called Canutillo, and Doroteo Salado lived there and his house was very near the river, and he got water from a little spring that was there, which was rather far from the river, and at that point the hills were rather far from the place where Salado lived, but the wagon road was near to that place, and was on top of the hills. He became acquainted with a place called Duraznito, which was a stopping place, where people stopped to give water to the animals. At that place the people would leave the carts on the road and go down to the watering place to give water to the stock. At that place the road did not run on top of the hills, but through the woods, el monte, and the road was quite far from the river, about 100 yards. He knew the place called White's Ranch, which was below Duraznito and was a cattle ranch. The house was near the river, but higher up than the river. He knew the rock called Piedra de Amolar, which was below White's Ranch, and the river ran straight down from White's Ranch to Piedra de Amolar. From White's Ranch going up the river, the road ran on top of the brush, and in that place it did not come down. Being asked in Question 60, whether the road between White's Ranch and Duraznito stayed up on the hills all the way, or came down at any place, he answers, "Yes, sir". And above Duraznito up to where Salado lived, the road ran always on top of the monte, through the scrub brush, and above that place the road ran generally at the edge of the brush. At Alamitos there was no thick bosque, but some trees, and on the other side of the river, there was bosque. From Canutillo where Salado lived, up, there was bosque

on the other side of the river, and there was bosque on the other side of the river at Duraznito. On the east side of the river there was very small bosque, very short, and as he traveled along the road at some places he could see the river, and at other places, he could not. He only knew the places where he gave water to his stock, and the stream was large. He did not see the beaver dam, but heard it mentioned only, nor did he know the place called the Estero de las Sanguijuelas, but he had heard it mentioned. He did not know anything about the Bosque de Artesa. He has recently visited the places which he has told about and could find and recognize them. There are trees at Alamitos, but he does not know whether or not they are the same which were there when he first knew the place. When he first stopped at Alamitos there was not any house there, but there was afterward a pole house, a mail station, but he does not remember who kept that station. He knew the man who lived there, but does not know his name. He remembers about the big flood which changed the river from the east side of Mesilla to the west side, but does not remember what year it was. He was living already at Dona Ana. He remembers when the soldiers from Texas came up through the country and went north, and was then living here at Magoffin's house, and moved to Dona Ana two years afterwards, and the big flood was after he moved up to Dona Ana. After the big flood, the river ran close to Alamitos, in the same place where it formerly did, but it does not run near Alamitos now, and he does not remember when the river ceased to run near Alamitos, but it was after the big flood. The river does not now run near the place where Salado lived, but it was running at that place up to the time of the big flood. The road ran on the hills, because there was water below, and one could not travel with carts there.

On cross-examination, he says that he lived at Paso del Norte thirteen years and eighteen years at Magoffin's Fort, and up above for 48 years. He used to stop at Alamitos only to give water. He was well acquainted with the river where he gave water, but other places he did not know. He did not know anything about the bends in the river, and did not know the island below Alamitos, nor where the river branched below Alamitos. He traveled a good deal, but only went to the river to give water, and at other times he was traveling on the road over the hills. In those days there was more water than of late years, and bigger floods than we have now, and when the floods came, the water would spread over all the bosques and they would fill with water, and the river would be very large, and at places would fill from hill to hill. At Salado's house, the river would go to the west, when the floods were on, far into the bosque, which was always muddy. There was not water always over a good deal of the bosque, for when the river was not high there was no water. He did not know the house of Gualdarama, nor the place called La Bruja, though he heard it mentioned. He could not see the river at all places on account of the woods and on account of the monte, and at places the mesquite and other trees and chaparral hid the river, and the river was over there at times to the west. Alamitos is north from White's Ranch. He knew Mr. Magoffin in those early years, and he lived at the fort here below. This was Franklin. Juan Maria Ponce had a store on the other side, and on this side there was only farming land. He does not remember that Mr. Magoffin went up the river and started a farm or dug a ditch or canal. He does not remember what year he moved to Dona Ana, but he was 32 years old then, and it was two years after the Texans came. In those early years at times he went up the river to see his sister, and at other times to haul freight. His sister lived in Dona Ana and Mesilla was already a

town on the other side of the river. He never made a trip from Paso del Norte through Amoles, and was never on that side of the valley. In those days there were bad Indians in the country and it was dangerous to travel up and down the river. He does not remember near Salado's house an arroyo or estero which ran along the foot hills. The river ran near the places which he has mentioned for many years, but he does not remember how many years, and he does not remember how many years it has been since it got away from those places, and he does not remember what year it ceased to run at Salado's house. In recent years he saw the river about three months ago, with Don Eugenio and with Mr. Reber and a surveyor, and some other men, other witnesses, who came from Dona Ana. Two were from Bosque Seco. From Dona Ana there was one by the name of Isabel Banegas and one Lopez, Severo de la O, Mr. Ramirez, Reyes Marquez, those are the ones who came from Dona Ana. From Arroyo Seco he knows only the name of one, Longino, and he does not know the names of the others. He stopped to show the river at Anthony and came there on the train. All the witnesses showed the river at the same time and found the same places, and all agreed on where the river ran in the early days. They were showing the river for the purpose of the suit between New Mexico and Texas, and they wanted to know where the river ran in those times, that is in the year 1850. This witness was not the oldest man in the crowd, but Reyes Marquez was the old man. They first showed the river at Alamitos, where they found the ruins of the house of adobe. It did not have a rock foundation. He says that he had said that he did not know whether the trees that are there now, were the ones that he saw there in those years, and there are now there four old trees. They are now about 40 feet high, on the bank of the river. He does not know when the river left that place. Prior to the time he went to

show the river, it had been many years since he had seen it at these places, probably 15 years. He was married in the year 1846 here in Magoffin's house, but he does not remember how old he was, and he does not remember the year when the Texans came, nor the year when the river changed at Mesilla, nor the year when the railroad was built from Dona Ana to El Paso, and he does not remember when 1850 was, and does not know anything to fix that year in his mind. South of Salado's house, the river ran down and he did not know of any bend, if it made any. At that point it was straight. He says he heard of the beaver dam, but did not see it and did not know where it was. There was nothing at Duraznito, it was only a stopping place, and nobody lived there in those years. Doroteo Salado lived at Old Canutillo, and he cut wood which he used to sell here in El Paso, and he brought it to El Paso by the river, and cut it on the west side of the river, and he used to cut it when the river was low, and when the river was high he did not cross. He saw him there about five years and he was a wood-cutter and a wood-seller all the time. The witness did not know the island of Jose Maria Garcia, and he does not know when they cut a ditch by Alamitos towards where Anthony now is, and never saw anybody digging a ditch. He does not know where the Canutillo tract of land is. He says that when the railroad came he lived in Dona Ana, and he had made a great many trips between White's Ranch and Alamitos, but he cannot remember any particular years during which he made trips. After he went to Alamitos and showed the river there he and the others came down below to Canutillo Nuevo, where they stayed two days and were speculating as to where the river ran in those days.

At this point, the Attorney General for New Mexico objected to the translation of the Spanish word *especular* or *especulando* as speculating, suggesting that a better translation would be that they were discussing or considering.

In answer to Question 277 on page 525, which was as to who was speculating as to where the river ran, he says, there was Don Eugenio and the lawyer, and the surveyor, and the witnesses, and that Don Eugenio claimed to know where the river ran and gave his version of it, and the surveyor claimed to know as to where the river ran, and the lawyer knew about it, and the witnesses each knew something about it, and after a good deal of discussion they all agreed upon it. Don Eugenio was the leading man in the company. Counsel then brings him to say that he is naturally more friendly to New Mexico and would rather see New Mexico win than Texas. He again says in answer to a question, that they spent two nights at Canutillo, and in the day time they came on foot down the river, and that Don Eugenio and the surveyor walked with them, parts by the railroad and parts by the river. Being asked if he could find a river-bed this side of Canutillo, he answers, "No, sir", but in answer to the next question, declares that the river-bed is there and he then says that the river is running now in the same bed as it ran before at Canutillo Nuevo, and at Canutillo Viejo, you can see the old bank of the river and it is about four feet deep, and he knows that it is the same river-bed he saw the first time he ever passed there, and from the old river-bed to the present river must be more or less 100 yards. The old river is nearest to the railroad. They could trace that old river-bed by that depression in some places, and in other places you could not see it. They found an old river-bed at Duraznito which was very near the railroad track. He does not know where the present river-bed is at Duraznito. This side of Duráznito Don Eugenio was able to find an old river-bed, but the witness does not know the name of the place and he showed it to all the witnesses, and it was plain at that last place. At Canutillo Viejo, the river-bed is four feet deep and at this last place about two feet only. He says that the old channel was "not

very wide there. It spreads out a good deal." He knows that is the old river-bed. He says above White's Ranch there are no brick houses and there is a brick kiln there, and one brick house, west of the railroad, and some old brick kilns. The river in the old days ran about 50 yards west of that brick house. This side of Duraznito, and down to White's Ranch, they rode all the way in the wagon and none of them went afoot over that district. They were at White's Ranch about two hours. He never heard of Fronteras, and he never heard of a surveying party representing Old Mexico and the United States going up the river to run out and survey some lands, nor of surveyors going up there with soldiers. He heard say that there was a party of surveyors surveying this line only (pointing to the westward) and says that above the brick kilns there is a line. (This may possibly have reference to the international boundary line established under the Gadsden Treaty, of which there is a monument on the west side of the river, as other testimony shows opposite the present smelter, and another monument on the top of the Muleros mountain.) When they left White's Ranch, they went back to Canutillo and stayed all night, and from there went to Anthony, and went home from there in the train. After that he saw Don Eugenio in Dona Ana, where the witness made a declaration and Mr. Amado Chaves asked him the questions, and someone took down his answers in writing, which the witness signed, but nobody took his oath. There is some misunderstanding in this, because in answer to Question 390, he says that they were writing what he was saying, but he did not sign it, and he does not know what became of it and has not seen it since. He says nobody has told him what he had said in that declaration, and he came here for this trial last night and nobody has talked to him about the case. He was paid for his services, two dollars for each day. He does not remember a road which in the early days was used in dry times through the valley.

On re-direct examination, he says that when he first saw Mesilla, it was already settled. He says that the name of his wife was Romana Madrid, and her parents were Felipe Madrid and Siriaca Hernandez. Father Ramon Ortiz, who lived at Juarez, performed his marriage ceremony. Being asked in Question 411, as to whether when he went down the river with Mr. Van Patten, he told Van Patten where he had seen the river in the early days, or did Van Patten tell him, he answers, "I told him". He repeats that it was only at the places where he had stopped to get water for his oxen, is where he knew the river and he told Van Patten and the surveyor where the river was at each of those places, and he did not undertake to tell them where the river had been at any other places. The other witnesses who went along showed Van Patten and the surveyor, where the river had been at other places.

On re-cross examination, the witness was asked, after they had spent the first night at New Canutillo, if they rode all the way to White's Ranch without stopping, and he answered, "No, sir, we would go on afoot and the wagon overtook us about half way", and the next question which is 420, is "Which half?" It is difficult to see what this question means, or how anybody could answer it, but the witness said that they were traveling on foot by the river about five miles. Going back from White's Ranch everybody rode in the wagon all the way without stopping anywhere.

We next have the testimony of

LEANDRO BENAVIDES

which begins on page 533.

He says that he lives in Las Cruces, and was born at Belen in New Mexico, and came from there when he was about 11 years old, and is now about 72. He was

baptized in Belen, and his father and mother were Juan Jose Benavides and Maria Hijinia Maestas. He remembers the raising of the flag at Mesilla, and he had been in that part of the country a year or two. They came in '52, but he does not know whether the flag was raised in 1853. When the flag was raised at Mesilla, they lived at Santo Tomas, and from there went to see the raising of the flag, and he saw that they raised the flag. He was a boy. There were many people there who were shouting and looking on. Before that time he had come down to Paso del Norte with his father, probably in '53, not quite a year after he came from Belen, and they went back after two days and took the road on this side and went to the ranch where Salado lived. He saw the place known as White's Ranch below Salado's place and when he passed White's Ranch, the river was very near. There was a house there on the edge of the hills. Going up from White's Ranch, the road went on the hills. When they stopped at the house of Salado, they saw Salado himself and they slept outside of the house. The river was near the house and formed a kind of bend there, and there was some bosque, cottonwood trees on both sides of the river. The largest bosque was on the west side. There was a little spring there from which he took water, his father sending him there to get water. There were other persons traveling with him and his father, two carts traveling together. He was told about the tree at Duraznito, but did not go to the tree and was only told about it. Afterwards when he was older and was already grown up, he went to Duraznito. The river was near the hills at Duraznito, and Duraznito was a peach tree. Opposite Duraznito, the wagon road was on top of the hill, and opposite the place where Salado lived, it was on top of the hill. When he first went up there, he did not know the Estero de las Sanguijuelas, but afterwards he heard about it and saw it. The river was near that estero, and opposite the estero, the road

was on top of the hills. He does not know where there was a place called La Bruja. In recent years he has known of the lime kiln called The Calero de Gualdarama, and where that lime kiln was, the road was on top of the hills, and the river passed near, you could see the river. There was no bosque or large trees near that place, but there were some willows; on the other side of the river you could see a bosque. He knew a place called Alamitos, where there was a station after he first saw the place. He has seen that place recently in the month of August, and was able to find the place. When he first went there, there were cottonwood trees and the watering place where people used to stop. They slept there one night. There was bosque there on the upper side of Alamitos, and there was bosque on the other side of the river. He does not know where the Bosque de Artesa was, though he heard it mentioned afterwards. At Alamitos, the river was near the hills. The river below Alamitos ran towards the side of the rising sun. It formed some small bends, but always ran towards the rising sun. He knows the place now called New Canutillo, and when he first knew the river, it ran there, where it is now, and below that place it ran straight. He has recently been at the place where Salado lived, and did not see the river there now. When he first knew Mesilla, it was on the west side of the river, and is now on the east side. The river changed its course so as to put Mesilla on the east side, after the Texans came back, and at that time he was living at Santo Tomas. When the river changed, it destroyed Santo Tomas and he thinks it destroyed other places below. He knew the town of Amoles before that flood, but he never went to that place again, and he says the flood drowned everything, even Chamberino and destroyed all the little towns along there. Before that flood, he had visited Amoles. An uncle of his was killed there and there they buried him. The witness was a grown man already and his

uncle was the father of Longino, a cousin of his. They went there to bury him. His uncle was shot, but that was before the big flood. He does not know where the people went after the big flood, who had lived in Amoles, but says that they went to the hills, and he thinks they built themselves houses out in the hills. The river does not now at Alamitos run where it did when he first saw that place, but he was able to find the old bed of the river where the water formerly ran. He does not know when the river ceased to run at Alamitos. After the big flood he does not know where the principal channel of the river was down below. It destroyed Santo Tomas and they built another town farther down. Below Alamitos there were two bends in the river and he thinks they came to Canutillo, where the river is now. They went to the west and turned back to the east. The wagon road went along on the hills on account of the muddy places below. There were some small places where the road came down off the hills into the low places, but it was not possible to come down when the river was high and for that reason the road was above.

On cross-examination, at pages 539 to 540, the witness testifies as to where Belen is and other places in New Mexico, and his answers are quite correct about the respective locations of Belen, Los Lunas, and Albuquerque. He says he does not know at what hour they left Belen, but it was in the morning, and they traveled with carts and there were about ten carts, and he was about eleven years old. He does not know how many days they were making the trip. The first night they camped at the place called Casa Colorada on the east side of the river. They crossed the river in front of Los Jarales (it may be said that Jarales is a place a short distance below Belen on the west side of the river). He thinks it was in November, and there was little water in the river. He does not remember where they camped the next night. Then he says, they did not cross the river after that,

but his next answer is that at Mesilla they crossed, and Santo Tomas was on the west side of the river. He does not know where they camped each night on the road, but remembers that they stopped at La Joya and this side of La Joya he does not know the names of the towns. There were farms at La Joya. They slept there and left early in the morning "according to the custom of the old men". Being asked why he does not remember the river above, he says, that he remembers it only from Roblero this way, and "From that place you can ask me about the river". Being further asked why he does not know as much about the river between Belen and Santo Tomas, as about what he saw this side of Alamitos, he says that he did not know the river and they came by the Jornada from Paraje this way. (The Jornada was a noteworthy stretch of country of about 90 miles, far away from the river and without water.) Being asked at what point they came back to the river at the end of the Jornada he says, at Roblero, and at Roblero, the bosque was on both sides of the river. They arrived at Santo Tomas in November, in the same month, and Santo Tomas was then a small place, but he does not know how many houses or people there were. There was a wooden church built of poles, and at Santo Tomas on both sides of the river there was bosque. At Santo Tomas, the river bent towards Brazito, towards the Fort at Brazito, which he seems to think was Fort Fillmore. He does not remember how long he stayed in Santo Tomas, before he went anywhere. That town was destroyed the year that the Texans came back and he was about 18 years old then, and the Texans came back the year before the river was changed at Mesilla. The Texans went to New Mexico, but he did not hear how far they went. They were fighting with the United States. There were yet Indians in the country on the warpath. There were Indians between Paso del Norte and Santo Tomas. The Indians lived in the mountains. When the Texans

were going along the Indians were bad and the Mexican people had to go out to fight them. He never went to fight the Indians. That first trip when he came to Paso del Norte, he came in a cart and traveled on the other side of the river, the west side. He was then living on the west side of the river. The only place they passed going from Santo Tomas to Paso del Norte, was Los Amoles, and they were two days making the trip. They camped at Amoles where there were a few houses. He does not remember that there was a church there or who lived there. They slept in camp on the ground. They had two carts and they were the same two that went back. They watered their oxen at Amoles at the ditch or acequia which ended at Amoles. The first day they traveled along the road in portions through the bosque, and portions through the mesquite brush. He does not know what the people of Amoles were doing in those early days, but he saw farming land there. He does not know that there were any crops growing, there was nothing planted there. It was winter time. At noon, the next day, they camped at Santa Teresa and watered their oxen in the river, and they came from a distance to give water. The road from Amoles traveled mostly through the bosque and the watering place was quite far and he does not know the distance. It was in front of White's Ranch and they stopped there for noon. They went through the mountains to go to Paso del Norte. They used to call it Los Canoncitos, and they went to Paso del Norte entirely on the west side of the river and got there almost at sunset, and they traveled from Amoles to Paso del Norte in one day with four oxen to the cart. He heard the names of some places along the road, and he mentions the Alto de los Cuarones. He does not remember how near the road was to Cuarones. He could not see the river anywhere. There was no river there. When they stopped at noon, he could not see the river and they traveled through the willows. He went

with the oxen to water. Afterwards he heard the Corral de Tapia mentioned. They stopped at noon time near the Medanos, and the road was there near the hills. He cannot tell how many yards he took the oxen to the water, but it was quite far. He says it might have been one thousand or two thousand varas. He does not know. He went part through the bosque, and part out. There was no bosque on both sides of the river at that place, and there was no water on the road by Amoles at all, and no old river-beds to cross where there was water, nor esteros where he could catch fish, or he did not see any, and no place where they had to cross with a pontoon or a boat, and no old river-bed on the road. He says he cannot 30 or 40 years after going through the country one time describe everything he saw. The road on the west side of the river was called the El Paso road. Afterwards he knew a place called Piedras Paradas, when he was already a man and married. After he was married he made other trips and came here to El Paso in carts, but he does not know what year it was. He went by Amoles and it was the same town he had seen before, but he did not know who lived then at Amoles and they stayed in camp and did not go close to any house. Only one cart on that trip. There were bad Indians in the country at that time and they traveled with only one cart when it could not be helped. The next day they camped again at Santa Teresa. He does not know who lived there, and he thinks there were houses but does not remember very clearly. When he got to Juarez, the sun had already set and he stayed that night in the house of his wife's uncle, who lived there at Chamisal. He returned from Paso del Norte by the same way, and camped at noon as soon as they came down from the mesa at Santa Teresa and they got water for their oxen that time in front of White's house. That night going back they went to Amoles and this was after he had buried his uncle there, but he does not

remember how long. He was not married when his uncle died, but when he made this other trip he was married and had two children, and Amoles was still at the same place after his two children were born. He does not know how old he was when those children were born, but might have been twenty-five, and that was long after the Texans had gone back. He did not make any more trips on that side of the river. He made another trip on the east side after he was married, but before he was married only one trip on the east side of the river, and all the testimony he gave yesterday was gained from one trip on the east side of the river, when he was a boy, and the country was full of Indians. He did not draw a map of the river, nor did his father draw a map of the river. He does not remember all the places where the river touched the eastern hills, but he remembers many of them. He has shown the old river in the month of August and they did not help him to remember the places that he had forgotten. He told them that the only time he was there was when he was a small boy, but he did not tell them that it was difficult for a boy to remember over so many years just what he had seen in the early years. Nobody helped him to remember about Doroteo Salado's house. He is not able to tell who lived at Amoles, because he had no conversation with anybody, but just passed by. He saw Salado and he was in his house. The witness went to get gourds to fill with water at the little spring which ran to the river, which had but little water in it at that time. The river was running there and it was a little muddy. Being asked if what he saw was an estero, he declares, "It was not an estero". He says it was running and if it had been an estero the water would have been still. He does not know that an estero ran there for ten years with spring water, in recent times. He did not say there was bosque on both sides of the river at Salado's house, but only bosque on the west side. There

were some small bends in the river from Alamitos to White's Ranch. The river was not straight as an acequia, but it had some small bends. He does not remember where, and does not remember a single bend in the river. He was on the road above. He did not know the island of Jose Maria Garcia, but had heard it mentioned. Amoles was the only settlement on the west side of the river that he knew. He did not know the bend of Cobrena, but had heard it mentioned. He did not hear of the Bosque del Gato, and does not remember hearing of the Loma de Arena. He does not say that he knew the Estero of Sanguijuelas, but he heard it mentioned. He does not remember when he first heard of it, but it was after the railroad came. He knew nothing about Gualdarama's house in those early days, nor about La Bruja. From Alamitos down to Canutillo, the river in parts ran near where the railroad now is. The river has changed, when there was a big flood, but he does not know what year it was. At Alamitos the old channel is there. When he went to see the river in August at Alamitos, he saw only one big cottonwood tree and if somebody else saw four after August, they saw more than he did. He does not know how old the tree was, the one he saw. He estimates the height of the tree at thirty feet. He cannot say that that tree was there when he first went there. There were some big trees there when he was a boy, but he does not know how many. He paid very little attention to what was at Alamitos and had no interest as to where the river ran, when he was a child. When he came to show the river in August, there came with him Don Eugenio, a surveyor, and several others. He does not remember how many witnesses, but there were Longino Mestas, his brother Seferino, and he does not remember the names of the others who were from Dona Ana. His brother is younger than he, about eight years. He thinks his brother did not know much about the river in the early days. He

joined these gentlemen at Las Cruces. Mr. Steen was the surveyor. We came from Las Cruces in a wagon and first saw the river at Alamitos. They were altogether, six or eight, but he does not remember exactly. He thinks Don Eugenio is an American, and he speaks good Spanish. He has known him many years and often talks with him whenever they happen to meet. He has always been his friend and is a very good man. He asked the witness to come and show the river and talked to him about it only one time, and he told him that they wanted to know where the river flowed in those years, in the year 1853, because there was a question and controversy between New Mexico and Texas. He did not explain to the witness that where the river ran in '53 would determine which owned the land. In Question 432, counsel speaks as follows: "New Mexico claimed all on the west side in '53?" and the witness answers, "Maybe yes; maybe no; I do not know". When they met at Alamitos Don Eugenio told the witness what was wanted, which was to show them where the river used to flow. He does not know that Don Eugenio was an old settler, but he has known him to be a citizen a long time, but he does not know that he knew a great deal about where the river used to run, and he did not know that he was connected with the stage line business in the early years, and he does not know that he passed up and down the river in the very early years, nor how long he has lived in this country, but he has known him for some years. At Alamitos they all agreed on where the river ran but he does not remember which one first pointed out the place where it ran. Being asked if it was a man from Dona Ana or Don Eugenio, the witness says, the man from Dona Ana, who said that it passed by there, that it flowed there, and he pointed out the place. He went to it and said, right along here ran the river in '53? This language being in a question, and to which the witness answered, "Yes, sir", and the wit

ness said, Yes, it used to run here and his brother said so also. He knew that the river used to flow by there. His brother made no trips with him when he was a boy, but if he made any trips it was afterwards, and the witness does not know where his brother got his information. The witness went with his father only and came with him every time he went to Paso del Norte and his brother never went with them, but remained with his mother. From Alamitos they came to Anthony on foot, and it might be 500 or 1,000 yards, it is near. They followed down where there used to be an old irrigation ditch, these words being put in the mouth of the witness by the question. Then he says that they followed the old channel of the river from Alamitos down, and he does not know what became of the irrigating canal that came down there, and that he never saw it. They walked down the river-bed all the way to Anthony, and then after dinner, they went to Canutillo. They got to Alamitos about ten o'clock, and walked down to Anthony by the old bed of the river. He does not remember any acequia in there, and what they walked down was not an old acequia, and he knows that very well, because you can always tell a ditch. He does not know that there never was a ditch cut by Alamitos down to Anthony. They did not follow any old ditch. He does not know that there never had been any ditch there. When they left Anthony, they rode in the wagon down the road to Canutillo but stopped at some places. They stopped at the Arroyo de Artesa. He heard that name mentioned by some other people who knew better than he did but he did not know any Arroyo de Artesa in the early days, and knows it was Artesa because he heard it mentioned now, when they were there lately, and he did not show the river at Artesa and his brother did not. The old men who knew, who came from Dona Ana did. They camped at Canutillo, at New Canutillo, and the next day as soon as they had breakfast, they started

along the track and went on foot as far as Durazn[illegible]. All parties walked on foot and the wagon was going on the road. They walked between the rails from New Canutillo to Durazn[illegible]ito and did not go down in the bosque or brush at all. They were following the old river-bed which was on the west side of the railroad track, right on the edge of the track. He says he could not plainly see both banks of the old river, but he knew it was the old river, because formerly he saw it there. They did find a river-bed walking along the railroad track and they were following it, and found it all the way between New Canutillo and Durazn[illegible]ito. When they got to Durazn[illegible]ito they got in the wagon and came to White's house. They did not trace the river from Durazn[illegible]ito to White's house, because you could see plainly where the river used to run from the wagon with the railroad between, and they could ride in the wagon and see the old river-bed. In some places they stopped. In August, there was some water, not much. He remembers a place where there was a little brick house and an old brick yard, and from the wagon they could trace the river there. In Question 567, counsel tells him that he could from the wagon trace the old river-bed all the way from Durazn[illegible]ito to White's house, and the witness says, No, sir, some of the companions used to get off, but he did not, because he was sick, and he knows what they told him and he was going that way and could also see it. At White's Ranch they did not stay all night and did not meet anybody from El Paso. They were looking at some monuments, but he does not know what kind of a monument, they saw it with the field-glass. It was on a white mesa. (This undoubtedly refers to the monument on the top of the Muleros mountain, which is on the international boundary established under the Gadsden Treaty.) When they got through looking with the field-glass, they turned back in the wagon and camped that night at Canutillo, near the town on this side of the

river. The next day they crossed the river and went on the other side to the Alto de los Cuarones. Being asked how many old river-beds they crossed, he says that they crossed an arroyo that he had not seen before, an arroyo from the hills near the Cuarones heights. It had no water in it, and being asked if there is no old river-bed or any river-bed between the bridge and the Cuarones now, he says, No, they turned back from a ranch that was there. If there were any old river-beds there no evidence has been produced by defendant of the fact. They went from there to find a place called Cobrena, but he did not help them find it, because he could not walk and was sick, and he is sick now and suffers with rheumatism. That night they came back to Canutillo, and the next day he went back with the mail man to his house. He does not remember if it was the following day that he made his declaration about what he knew. A lady took it down and Mr. Van Patten, Mr. Steen, and Mr Reber were present. He does not remember if Mr. Chaves was present. Don Eugenio interpreted what he said to the young lady. Mr. Reber asked him the questions and Don Eugenio interpreted, and the young lady wrote down something and wrote it out on the typewriter, and he signed it afterwards. He does not remember whether they read it to him or not. He took an oath, but he does not remember who administered it. He thinks it was the lady. He has never seen the paper since. He says Van Patten told him the case was between New Mexico and Texas for a part of the valley up above, or rather he assented by an affirmative answer to that statement by counsel of what the case was. He feels friendly toward New Mexico and expects to continue to live there, and does not expect to live in Texas as he is dying now, and as between Texas and New Mexico he prefers New Mexico. Don Eugenio paid him two dollars a day for his time.

On re-direct examination, he says that following the old river-bed below Alamitos, he never saw any acequia as wide as that old river-bed, and that the biggest acequia is about twelve feet wide and that the old river-bed is wider than that. They slept in camp at Canutillo Nuevo two nights only. He remembers the road below Alamitos and near Anthony which runs to the west, and between Alamitos and that road the ground is planted and cultivated. When they made the trip down the river, they stopped at the place where Salado formerly lived, and he declares that he would not be willing to come and tell any lies for New Mexico.

Next we have the testimony of

CALISTRO TARIN

which begins on page 567 of the record.

He says that he lives at Ysleta, below El Paso, in Texas, where he was born. He has not lived there all his life, but has been in New Mexico and in Arizona. He was away from Ysleta a long time and came back about 18 years ago. He lived at Ysleta until he was ten years old and then went to Las Cruces and was there about three months and then came back to Ysleta and remained nearly one year, and then went to Las Cruces and from there to Mesilla, where he went to work for a man named Miguel Arias. He stayed there until he enlisted as a soldier, which was after the battle of Valverde. He served two years and a half as a soldier. He does not know very well about his age, but is about 72 years old. He went to Las Cruces the first time with his aunt who took him to stay with her there. She was living at Las Cruces. Her name was Gabriela Tapia. The first time that he went to Las Cruces, he traveled on this side of the river and when he came back, three months afterwards, on the same side, and when he went up again a year [illegible]

wards, he went on the same side, but did not go back until after he was a soldier. The first time he went up the river, he went with his aunt and a man with them whose name was Thomas, who lived with his aunt, but he does not know his other name. On that first trip, he became acquainted with places along that side of the river. They started from Ysleta in the morning after breakfast, and they traveled to White's house, where they rested a while and then went on and traveled until early the next morning, when they reached Las Cruces. They did not sleep that night until they got to Las Cruces at daylight. They were traveling on horseback. At White's house, he remembers seeing the river very near to White's house, which was on top of a little hill, and there was only a road between the house and the bank of the river. His aunt and the man who was along told him, "this place is Los Alamitos," and there was a bosque there and water, plenty of it, and the river was very near that place. At that time there was a good deal of water and it was running. There were no houses there. He has visited that place again, about two months ago, and went with a lawyer and a surveyor and Don Eugenio, and there went with him Jose Maria Barbaro, Pedro Albillar, and Jesus Olguin. He does not know who the surveyor or lawyer was. He was able to find the place which he knew was Alamitos when he was a boy. The hills or ladera are near to Alamitos. From White's Ranch up the river, they said the wagon road was above and they would travel at the edge of the hills on horseback, where there were indications of a trail, which was close to the river at times, and at times a little farther. From Alamitos down this way, the river ran at a place where the railroad is now, very close to the edge of the hills where the railroad is now. On that first trip he did not learn of a place called La Bruja, but only heard the name, and he does not know where it was. He did not know where the Calero de Gualdarama was. He knows a place now called New Canutillo, where there is a bridge which he has seen, and

when he first became acquainted with the river, it passed right by there. Below Alamitos there were some bends in the river which came towards where the sun rises, going out to the west and then coming back toward where the sun rises. He does not remember how many bends there were below Alamitos. He has recently seen a brick kiln but he does not know what is the name of the place. When he first knew the river, it passed behind the brick kiln and formed a bend towards where the sun rises, going out to the west and then coming back towards where the sun rises. He used to hear the name of Salado there, who lived at Canutillo, and there were some huts there, or jacales, and the river was just below. There was a little spring that was near by, and the river was right there close. The edge of the wood was near there. The road was on top of the hills, and the laderas of the hills extended back. From the place now called New Canutillo down to where Salado's house was, the river ran close to the hills. He did not know the place called Duraznito, but his aunt told him that there was a place about there called Duraznito, and it was at Canutillo Viejo, up there, she said there was a place called Duraznito around there, but he did not learn where the place was. Between Salado's house and White's Ranch the river ran near the hills. He never saw the beaver dam in the river above Salado's house. He knew that the wagon road, when he was young, was on top of the hills, but he never traveled that way. When they went to Alamitos, they went in an automobile, starting from here at this place, and they stopped at the house of Salado and at White's house, and at New Canutillo, and at the place where the brick yards are. At New Canutillo they went to the edge only of the river. The surveyor was inquiring where the river used to run. They got out of the automobile at the place where the brick yards are. Above the brick yard, between there and Alamitos, they stopped the automobile, but did not get off, in about four places. They traveled on foot only some

places, where they went on the edge of the river. At Alamitos he could find the old river-bed as he first knew it, and then they could see bosque on the other side. Below Alamitos, there was very little bosque on the east side. Below where Salado lived, there was a bosque on the other side of the river, but he never went over on the other side of the river. He does not know where Vado de Muleros was, nor the rock called Piedra de Amolar. They followed the bed of the river from Alamitos a little distance on foot, down to where there is a bridge on a road which runs west from the town of Anthony. When he first went to Mesilla, it was on the other side of the river and now the river is on the other side. Before he went away as a soldier there was water on both sides of Mesilla, and when he came back from being a soldier, the water was only on the west side. He remembers when the soldiers from Texas came up the country and that was before he enlisted as a soldier, and before he enlisted, he does not remember any great flood in the river in the vicinity of Mesilla. There began to be some water on the west side of Mesilla when he was working for that man on the other side of Mesilla. At that time, the principal channel of the river was on the other side and then he says that there was some water on the other side. In coming back after having been a soldier was when he saw the station at Alamitos, and the river was running there as he had seen it when he was a boy.

On cross-examination, the witness seems to make it plain that he traveled all night going to Las Cruces only once, and the other times he traveled in the daytime. The second trip they left Ysleta early in the morning and stopped at the mill, which they reached before noon. They did not eat there, but stayed a little while and went on and by nightfall they got to the watering holes, which are just before they got to Las Cruces. They traveled from Ysleta to the watering holes in one day. At White's Ranch he went over a trail or path and left the wagon road and fol-

lowed that path below the hills until he got to Alamitos, and never used any part of the wagon road, and he never did travel that wagon road. Between White's Ranch and Alamitos, he did not travel over the wagon road. They said it traveled over the hills, but he did not know it. This horseback trail ran by the edge of the hills. It was not level, but it was right at the point of the hills. The water was right close there, just a small distance. The water that would hit on the side of the hills. Being asked in what war he enlisted, he says, he does not understand which war is meant. He enlisted for five years, or for during the war, but he does not know which war. It was under the flag of the United States. He does not know who the man was who enlisted him, but he was there at Fort Valverde, and after the battle of Valverde. He served two and one-half years, working with the Indians in various parts. They traveled from Valverde to Fort Union, the largest place, and to the Sierra de Raton, to Las Animas, and Fort Bascom, to the east and towards the mountains. Captain Lindsey was the first captain and the lieutenant was Lyon. He was not in any battles and fought the Indians once, from Bascom to the south, and Bascom is from La Junta where that river runs below, and it is right close to Fort Union. From Las Vegas a little farther up. He got a pension for being a soldier and is drawing a pension now. He got some land, but he does not know where it was as he sold it. He was not wounded, but draws a pension because he was a soldier. He expects some more money for being a soldier. He is asked if he expects more money growing out of the result of this case, and he says he does not know who is going to give him any, and he does not expect any. Mr. Van Patten did not say anything to him about getting a pension further, nor further money. He had never ridden in an automobile before he went up the river. Van Patten took him in an automobile. The automobile did not run very fast, and they stopped wherever they wanted to. Colmenero was not along. He knows Colmenero, who he

thinks is a little older than he. They were raised together. The witness was older than Benigno Alderete, that is Benigno says he is four years older. When he went to White's Ranch in this automobile, he does not remember how many years it had been since he had visited that place before, but it was only when he came as a soldier that he saw it, and not from that time. He came back here to live after he had been a soldier, but has not lived in Ysleta ever since. In the same year he went to Arizona and has been here now 16 years. In Arizona he went everywhere, to the mining camps, and traveled in wagons. He does not know which way he traveled from Ysleta to Arizona, but he went with the train of Esteban Ochoa overland through the mountains. They crossed the river on the other side of Picacho, which is above Anthony and north of Mesilla. They did not go from Ysleta to take that trip, but from Las Cruces, and left in the morning about nine or ten o'clock. He does not remember in what time of the year it was. They crossed the river through the ford and on both sides of the river at the ford there was bosque. Being asked what is a bosque, he says, that it is where there is a whole lot of tornillo, cottonwood, mesquite and all kinds of brush. If cottonwood trees stand by themselves without mesquite or willows and other low trees, when it is not thick and is only scattered trees, it is called trees and not a bosque, and the place is called bosque only where it is thick. In those early days when it rained floods would come. At times they came from the snow and at times from the rain. It was usual to have a rise in the river every May or June. When the river came down high, it would spread out over the bosque through the trees and it would wash down some trees, which were easiest and thick, and at the bends the water would cut the banks and change the course of the river and form some new river-beds, and when there was a flood it would fill up the old river-bed and in those places it might fill up the old river-bed with sand and trees and

brush. At Salado's house, he looked across and saw water in the valley and saw the water that was running over there, and when he saw it, it was not a flood, it was running naturally. He never saw a flood in the river between White's house and Alamitos. He never saw any estero along the trail above old Canutillo. He knew nothing about the Estero de Sanguijuelas, and did not see any estero below there towards White's Ranch. When he came down after being a soldier, he passed White's Ranch in the night time and did not pay any attention. After that he did not see it in the daytime, but he did see it in the daytime when his aunt took him to Las Cruces, when it might have been about three o'clock, more or less. There were some Americans there, only about two. When he went to show the river to Van Patten, they could trace the distance between Salado's house and White's Ranch only following along the river according to how it makes its bends, and they left the automobile on one side of the house and went there to the house of Salado and then they went below on foot. Between White's house and Salado's house, they left the automobile above White's Ranch, two or three miles above there, and they did not cross the railroad, but where the railroad is they just walked along the edge where the river used to run. It was on the east side of the railroad and they did not have to cross the railroad to find the river. Where it hit the hills, there is where the water ran, and when he knew it, the water was running between the railroad and the hills, all that stretch, which is in a straight line. He says he can tell now that that was the river when he was a boy, notwithstanding the railroad has been built there, because there was a current of the river, and he saw the water running there. The present wagon road he did not know, but still he could tell that was the river-bed as he first knew it when he was ten years old, except where it is cut, where they cut the hills. Between the railroad and the hills, when he went to show the river, he saw water

only in those holes. He saw only one place where there was water, where they were working and the other place they had to go around because there was water there. He saw water there in one place where there was an alkali place and they were fixing the road there. He never traveled on the west side of the river, and made only three trips up and down the river when he was a boy. In question 387 on page 588, he is told that he had said that after he had ceased to be a soldier, the river ran still at the same place he knew it as a boy at Alamitos, and he answers, that right there at the place there was still water there, but it was not running in abundance as before, and he believes the main river might have gone through the bosque. The bridge that he walked to at Anthony, the other day, is close to Anthony. This way (pointing westward), and it crossed an acequia or a low place there. He says they were there and the gentlemen asked, "did the river run here", and those that knew said, yes, here is where the river ran, at that bridge. When he went to show the river in August, there were small bends east of the county road, where the automobile went, where there is water. He does not remember how many there were. They are all on the east side of the wagon road. He is asked, when he first knew the river, if it followed around those bends on the east side of the wagon road, and he says, yes, it ran by the edge of the foot hills, adjacent to them, and where the railroad track is, it ran by the hills there. He saw water this side of New Canutillo, where they made the turn and there is a large bend in the hills, and water followed around the edge of the hills, and the river when he first saw it as a boy, followed those hills. This side of Doroteo Salado's house, he does not remember that they made another turn going in the automobile. For a number of pages, from page 590 to 596, there is a great amount of cross-examination which does not seem to elicit anything material to the

present case. He says that Don Eugenio first sought him as a witness and came to Ysleta a month or two before he went in the automobile, and asked him for the oldest men in Ysleta. The witness did not give him the names of the oldest men, and he does not know who gave them to him. He said that he wanted to get the oldest men who knew where the river ran in those days, and the witness told him that he knew it in those times, and going there, if he remembered where he saw it, he would tell him, and if not, no. The witness told him that he knew the river ran close to White's but did not tell him any other place. He had known Don Eugenio a great many years and knew him in Ysleta once, but he does not know if he lived in Ysleta. He had a woman there. He came in an automobile with Don Eugenio from Ysleta to White's Ranch, and there were six or seven men in it, four witnesses and three other men, and they went to Alamitos and back to Ysleta, getting there late in the evening of one day, and he recognized where the river ran at the places he knew when he was ten years old, and the river is not there now. The river is now the same as when he was ten years old from White's Ranch this way to here. Being asked if the river is now at any place from Alamitos to White's Ranch, where it ran when he was ten years old, he says, it is not there now. The water does not run there now. After that time he saw Mr. Van Patten about a month ago in Ysleta when he told him to be ready when they wanted him on this case. He made a declaration on the same day that he showed the river, here in one of these high houses, but he does not know how many floors he went up. They made some papers and took their sworn statements only. A gentleman who was there writing asked the questions, one would ask and another would write. They told us to tell the truth and nothing more, and a man swore him and there was an interpreter present, but he does not who he was. He knew only Don Eugenio,

who did not ask the questions. He answered the questions and somebody wrote it down, then they took it off on the typewriter and then he signed it, and he got in the automobile and went home. Since he came the day before yesterday, he has talked with Don Eugenio and has taken meals with him twice only. On Friday he came with Don Eugenio from Ysleta in the street car. His statement was taken in Spanish, but he does not know whether it was written in English or in Spanish. He does not read English nor Spanish and he does not know what the typewriter put on the paper. After testifying on Saturday, he went to Ysleta in the street car and came back last night by himself in the street car, and did not talk to anybody Sunday about the case anywhere.

On re-direct examination he says, that when he went up the river along the trail, when he was a boy, he could see the river all the way from the trail. If there were a great many large cottonwood trees in one place, he would call it a bosque. He thinks the floods would come from the rains about which he had spoken, in August and in May, and sometimes they would come early and sometimes late. They usually have rains in New Mexico in May and August. Along the trail which he traveled when he was a boy carts could not go. He does not remember how long he has had his pension. He was receiving $51 for each three months, and now he is going to receive $23 every month. When he began he received $24 for every three months, and it has been increased twice or three times. He expects to get an increase of pension when he is five years older, if he lives that long. He has his certificate here, and produces the paper, and on page 604 of the record, it is shown that the pension certificate is dated June 11, 1913, and says that the witness had been a corporal in Company "E", 1st Regiment, New Mexico Infantry, and is entitled to the pension

shape of a double horseshoe and then a straight line across, to indicate how he traveled.") When the river made these bends, it would go out into the bosque, but he does not know how far. In places the turn could be seen close, and in other places it could not. On page 610 there is reproduced his drawing of bends and the straight line through the curves, and on page 611 is reproduced a drawing made by the witness which is not very enlightening, although presumably it was quite clear to him. Opposite page 612 there is reproduced another drawing by the witness, and on the next page still another. There is an obvious mistake in this because the commissioners say that the witness began drawing his map at the place marked Alamitos and ended it at the place marked El Paso on the drawing, but the drawing as reproduced does not show Alamitos at all, but by some error evidently, the name Duraznito is put at the beginning point, and as I stated at the time, it would appear that he had to go back to get to El Paso, because his paper did not give him room to make the river coming on down from Alamitos. He comes down to White's Ranch passing Salado's house and from White's house, he turns back to reach El Paso, when as a matter of fact, as can be seen from maps and can be gathered from all of the evidence, White's Ranch is between Alamitos and El Paso, and the river continues down below White's Ranch in order to reach El Paso. Being asked if he has his baptismal certificate, he says, no, and that the Attorney General for New Mexico has it, but he does not know the date of it.

On re-direct examination, he gives the names of his father and mother as Nicasio Tarin and Reyes Lopez, and being told that the baptismal certificate gives his name as Jose Calixto Tarin, he says, it is the same name as his name, and that the priest usually put Jose before each name. He says that Calistro is the same as Calixto.

The certificate appears on page 615 and shows that this witness was baptized when five days old on September 20, 1843.

The next witness whose testimony appears in the record is

EUGENE VAN PATTEN

which begins on page 617.

This witness lives at Las Cruces, New Mexico, and was born in Rome, New York, and is going on 74 years of age, and lived in New York until he was about 17 years old, when he came here with the overland mail in 1857, in the spring, and stayed here at that time very near two years. On this side the place was called Franklin. At that time he was conductor on the overland mail, and a portion of the time road master, up and down the road to see about the stations. When he left Franklin or El Paso, he went to Mesilla, and was distributing agent for the Apache Indians under Agents Stake and Walker. He made Mesilla his home, but was traveling most of the time. He went to Pinos Altos and stayed there about eight months and then came to Mesilla, and went into the Confederate Army in 1861 and served in the neighborhood of nearly four years. When he was discharged he came to El Paso and went into Texas, and then came back to El Paso and lived in Juarez about four years. Then he lived for about eight months in Amoles and then came back here and stayed for a year and had charge of Mr. Henry Cuniffe's business at Hart's Mill. Then he went to Las Cruces where he has resided ever since. He has held a good many offices during his residence in New Mexico. He was sheriff and collector of Dona Ana County, register of the United States land office, county judge of Dona Ana County, and has held several other offices. He is colonel and major of the New Mexico militia. He acted as conductor

of the overland stage line a little over a year, running from El Paso to Tucson and back. It took from eight to ten days to make the round trip, and sometimes more. The line of travel was from here to Tortugas, and from there across to Mesilla, and from Mesilla across to Picacho, and then straight by the road on to Tucson. Being asked what other places there were on the road to Tucson, he said, they had a station at the old White's Ranch, and a station at the cottonwoods at Scott's; and then another at the place called Mescalitos; another at Tortugas; one at Mesilla; one at Rough and Ready about 14 miles from Mesilla; another at Goodsight; one at Cook's Springs; one at Cow Springs; one at Soldiers' Farewell; one at Tanks; one at Stein's Pass; one at San Simon; one at Apache Pass; at Ewell; at Playa; at San Pedro; at Cienega, and then at Tucson. They generally started from here in the morning, but the stage ran night and day and if the coach came in late they would have to wait, sometimes as much as twenty-four hours. Whenever a stage came in, they had to be ready to go out, that is, a stage coming from the east or from the south. The conductor would come in here and this was his lay-off, from Van Horn, Stockton, and Quitman, and other points south and east, and then the witness would take the stage from here to another conductor and turn it over to him, and then he would take it from him and bring it on and turn it over to the next conductor who went to Quitman and Van Horn. He would average one round trip every ten days. The second station north which he said was Cottonwoods, is the same place which the native people call Alamitos. After that he was employed as road master, taking the place of a man named McNeese, who got permission to go back home, and the witness did that work for four or six months, and had charge of the road from here to Tucson, and had to travel back and forth over that road. It was his business to go to each station and see how they were and how they

were kept, inspecting the stations to see what was lacking and attend to the blacksmithing and everything of that kind, that pertained to the running of the business. During that time he became well acquainted with the road and the river between here and Alamitos. Leaving here, the road ran up, and near where the smelter is, the road went off into the hills and came down where the Courchesne bridge now is. From White's Ranch, the road was on the right bank of the river going up, the east bank of the river, and the road about a quarter of a mile above White's Ranch had two forks and the one which they generally had to travel went along over the hills, and there was another little fork a short distance that cut across and when it was dry there, they could cut across and then go on the hills again, and they kept on up on the hills until they got near to where Anthony station now is, and then made a little curve and came right into the Alamitos station. That low place where the road cut across was perhaps a mile and they could travel that instead of going over the hills. It was bottom land where the river in high water would overflow and one could not travel. It was called the Salitre. There were two or three such cut-offs that they could cross. The river followed the foot hills and some places the foot hills went out and made a little curve and the river would follow the foot hills. After he ceased to work for the stage line, he has been traveling up and down the country between here and Las Cruces for the last fifty years. When he first knew the country, the river flowed near the Alamitos stage station, and it was the main channel of the river. He knew the place which was called La Bruja, and La Bruja is a witch. The place was a curve in the river where there was a bend and it overflowed there and the river made a sort of a curve. It was called the Alto de Bruja, or The Witch's Height, but he never saw any witches there. From Alamitos the river ran south below the station now called Anthony, and

made a bend and came in at La Bruja, that is, made a bend west and came back to the place called La Bruja, and then turned and made a very large bend from there down to three or four miles below and came in just above where the new town of Canutillo is. He was acquainted with the Estero de las Sanguijuelas which was about 150 yards from the river. When the river was very high, it would back into that estero, but the estero was formed from the water from the mountains, and rains and arroyos running into it there, and it overflowed and went back into the river. In very heavy rises the river would run in there. That estero was above the place called New Canutillo, maybe half a mile. He knew where the Bosque de Artesa was on the west side of the river. There was not any large timber on the east side of the river between Alamitos and White's Ranch and on the west side, it was all woods, large trees and small ones too. The bosque extended very near to the foot hills on the other side, except where they cultivated the ground at Amoles. Between Alamitos and La Bruja, a portion of the river runs where he first knew it, and a portion of it does not. From La Bruja down it runs a little east of the big bend below the brick kiln. It makes a bigger bend now than it did at that time. At the place called New Canutillo, the river now runs just about where it did run when he first knew it. It ran south along the foot hills down to Salado's place and the place called Duraznito. From New Canutillo down to what was formerly called the beaver dam, it runs almost identically as it did then. Now it makes a turn and goes to the west. He knew the house of Salado. The river does not now run at that place where it formerly did. When he first knew it, Salado's house was between 40 and 50 yards from the river, and the house was on a hill, 20 to 25 feet higher than the river. East the land slanted down to right at Salado's house. There was a bank of the river west of the house. Along all that stretch of

country there is a gradual slope from a half mile to a mile and a half and then there are some pretty steep hills. The old overland road used to run at the bottom of those steep hills, at what was called the second bench of the hills, and then would go along below the high part of the hills. When he first became acquainted with the river, from the place where Salado lived, the road down to White's Ranch, ran along the eastern foot hills and would make small bends where the grade of the hills was down to the river. In some places the grade ran farther west than at others, but the river would follow the foot hills. From the lower hills the river did not go scarcely any distance. In several places the railroad runs right in the bed of the river as he first knew it. In those first years he became acquainted with the country on the west side of the river and traveled up and down on the west side many times. Going to the west side of the river they went up and crossed at Vado de Muleros and took the Paso del Norte road that went by Piedras Paradas and Santa Teresa and to Amoles, and from Amoles to La Mesa, and from La Mesa to San Miguel, from San Miguel to Santo Tomas, from Santo Tomas to Mesilla. Vado de Muleros was just about all the way from White's Ranch, all the way from there down it was called Muleros, and Vado de Muleros was about three-quarters of a mile below and south of White's Ranch at Piedra de Amolar where the Courchesne bridge is. That whole stretch of country was called Vado de Muleros. They went out about the same road that the stage did and the road went down to the Courchesne bridge, and just above that bridge, or where that bridge is now, they crossed the river. The Piedras Paradas were standing rocks and came right out of the bottom, and at that time some of them must have been ten or twelve feet high. The river must have been six or seven hundred yards east of Piedras Paradas and you could not see the river from the Piedras Paradas as there was

a woods in there. The road ran between the woods and Piedras Paradas. From the rocks to the road it was from three to four hundred or maybe six hundred yards, and from the road to the river it was more than that, double that distance, to the vado where they used to water the stock. When they came out of Juarez they generally camped at Piedras Paradas. The place was called Ancon de Borregos and there was pasture for the stock and they camped there, and the people who camped there had to go to the river for water for their stock. He knows the place then called Corral de Tapia which was on the northern end of what was called Santa Teresa. It must have been an old Aztec place at some time or other. There is one big house, or the ruins of one big house and he got pottery and other things there. From the Corral de Tapia it was at least three-quarters of a mile to the river, when he first knew it. The plains of Yerba del Manso were almost directly east of the Corral de Tapia, or a little north of east. The people started at Piedras Paradas on the El Paso road and in front of Piedras Paradas and in front of Santa Teresa and struck what they called, and what is still called, Yerba del Manso, which is a plain of bottom land. From the Corral de Tapia he could not see the river looking east. The woods prevented it. The road was about three hundred yards from the Corral de Tapia and that was upon the sand hills and sloped down into Yerba del Manso, and there was nothing but mesquite growing in there. Being asked what other camping places there were on the west side of the river, he says, there was Alamo Naranjo, or Orange Cottonwood, Corral de Trosas, and from there they went to the town of Amoles. When people camped at Alamo Naranjo they got water from the river, but it was a good distance and must have been a couple of miles from there. There was plenty of grass and plains where they could camp away from the woods on account of the Indians. There was no water at Corral de Trosas,

which was north, a short distance above Alamo Naranjo. From that corral one could not see the river, the view being obstructed by woods. When people camped there, they went to the river for water. They generally camped there to rest their stock. They traveled in wooden carts and used oxen and traveled very slowly. At the places where they watered they had to drive their stock to the river. They would not camp in the woods in those days, but out on the plains on account of the Indians. At Amoles there was an acequia there where the people got water. From the old town of Amoles they could see the river which at times would come within a mile of the town, but you could not see the main river from the town of Amoles, the woods obstructed the view. When it came within a mile of Amoles it was from freshets or floods in the spring, in May or June, and that place was the overflow of the water. There was an island there that used to catch the water from the foot hills and there would be the overflow from the river, also. There was a round place there and it ran around that from the arroyo from the mountains, almost in a circle, and emptied into the river and when it got very high, the river would also fill that place around the island which belonged to Jose Maria Garcia. The arroyo he speaks of was called Arroyo Artesa, and it was also called Arroyo Frijol and Arroyo de los Difuntos. The arroyo down nearer here, near Corral de Trosas was called Arroyo de Difuntos. He was at Juarez when the town of Amoles was destroyed by the floods in the spring of 1864, and in 1862 there was a big rise. He belonged to the 1st Arizona and they were at Mesilla, attached to Sibley's Brigade with three or four regiments from Texas, and the river came near running into Mesilla and they were ordered out to help the Mexicans to stop it and keep it from coming into Mesilla, in '62. In '64 there was nobody there and the rise was larger, the largest he ever saw in the river, and it came through Mesilla and

left Mesilla on one side of the river in Arizona and Las Cruces was on the other side. The river ran in between Mesilla and Las Cruces and it has always run that way ever since. Between Mesilla and Santo Tomas, and that is the time it destroyed those towns. When it broke through two years later he was in Juarez and had been before, waiting to see whether it would be safe for him to come back to the United States. Before that it was not safe for them to come. He was a refugee then. At the present time the river runs right up against Piedras Paradas. It has been within the last few years right where it is now. After the big flood he lived at Amoles, in '65, for about eight months. Not in the town that had been washed away, but at La Union which was just moved from there to the hills. At that time the river ran right in front of La Union. It ran in across from old Amoles, but since it has filled up and changed back to the east. When he was there the river was about a mile from La Union, but about a mile above it made a bend where Jose Enriquez now lives, and there was a bank in front of his house, almost as high as this ceiling ("ceiling of court room is about 20 feet high"), not more than a couple of hundred yards from his house. The house is there now, but it is leveled up and is almost level. The river was almost up against the hills on that side. At that time the river went in and took out the Corral de Trosas, and ran right where Corral de Trosas is. The river turned around below Corral de Trosas and made a turn by the west and ran east by south and made the turn by Piedras Paradas and came into the canon, where it now runs. From La Bruja nearly down to Old Canutillo, the river runs near where it did when he first knew it, and the river got back to that place lately at what is called Sanguijuelas. It always ran there and now it changed and went towards the west and ran where the Canutillo bridge is, and turned still farther west and in front of Sanguijuelas it ran some

distance from where it is running now, and then it went down where the west end of Canutillo bridge is and went in a southerly and westerly direction. Being asked if he remembers when the river got back from the western hills over to this old river-bed, he says, he thinks it started back in 1884. From '64 to '84, it ran over yon way and then made a change in '84 and came back this way. He knows in '84 the river withdrew from there and left it almost level in front of his house, and it seems that this refers to the house of Jose Enriquez, already mentioned. He says that his wife was a niece of Simon Enriquez and was a favorite of that family and they went there very often to visit them, and he was always hunting quail and rabbits and ducks, and there were big ponds there, and several people who lived at El Paso, Newcomb and Fountain and others, used to go up there and stay three or four weeks hunting, and these Enriquez people were the same as his own people. The railroad company built a long stone dyke to protect its track right below Mesquite Station, near the llano Mescalitos and that changed the river. There was a bridge at Vado Station and it changed the river and left the bridge high and dry with no water under it. Being asked if he was or not, able to find and identify the various places and parts of the river as he knew them in the first years, when he lived in this country, he says, that he could, and could go out on the ground and show all these places and the bed of the old river.

On cross-examination, he repeats that he was about seventeen when he first reached this country and located at El Paso, or Franklin as it was then. He says that there were then some jacales on the side of the hills, and where the Mills building is a little adobe house, and another little adobe house where the Sheldon Hotel is, and a very few adobe houses afterwards on the main street, and there was Magoffinsville down here (pointing

southeasterly), just below where the court house is. Magoffinsville was a fort, and Magoffin had a Sutler's store there. It was a very short time when he went up above White's Ranch, when he was between 17 and 18. White's Ranch was an old ranch and he supposes it was a stock ranch or something of that kind, but it was fixed up for the overland mail people as a station in 1857, so they could put their horses and mules in there. He first saw White's Ranch in March or April of 1857, before the floods came, and at the same time, he went as far as Alamitos on a coach. He says that from here to Alamitos they went over the hills and came down where the Courchesne bridge is, and then went up over the foot hills from White's Ranch. Between White's Ranch and Alamitos, the road ran over the foot hills and near the second higher foot hills, at places a half a mile and at others a mile and a half and two miles from the edge of the valley, and that was the only road on that side of the river, and the traveling public generally used that road, with a few places where they could make cut-offs. The road came to the river-bed where there were places where they could make cut-offs when the river was low, through the salt flats. That was a bad road, a hilly and sandy road. In wet times the generally traveled road came over and kept away from the muddy places. The road did touch some of those points which were on the river, and one it did touch all the time, at Old Canutillo, where they came down to get drinking water, and he would fill two five gallon kegs. That was one of the nearest places that the road came. It was a camping place to go over to the other side of the river, a crossing place, and people stopped there because there were several buildings and several families, and there was a spring there of fresh water, from which he used to fill the kegs. From the main traveled stage road it might have been a half mile west to the house of Salado. There was a "V" where people came in and

went out. There is a bend from Old Canutillo to New Canutillo, and the road turned out from that point at Salado's house and followed that bend around. It had to go some distance on account of the arroyos that came in between those two places, Old and New Canutillo, and from there it turned around and went out to a considerable distance back of New Canutillo and came in again just above La Bruja, where the brick kiln is now, and traveled still farther out and came in again about three-quarters of a mile south of the present La Tuna station on the railroad (La Tuna is the name of the same place on the Texas side of the line which is called Anthony on the New Mexico side), and then it bore west and went in on almost a direct line to Alamitos station. The brick yard is at Vinton which is near that old place known as La Bruja. La Bruja had no other name that he knows of, except Alto de las Brujas, Heights of La Bruja. There were no houses there when he used to know it. There is a house there now, the Gualdarama house, and there are two or three old lime kilns there. The stage road was about a quarter of a mile east of La Bruja. The river overflowed in there and from what they called the Alto de las Brujas, it could not have been more to the main channel of the river in places, than 200 yards, and in places less. He knew the place Duraznito, and being asked how far was the stage road from the house where he heard there was a peach tree, he answers, there was a peach tree there, but there was no house and he did not know of any building at Duraznito. He saw the peach tree there which was on the west side of where the railroad is now, about 150 yards. From the peach tree there were maybe four or five hundred yards to the old river. He knows the place called in later years, White's Spur, where there is a little brick house and an old brick yard. The stage road in the early years might have been about a half a mile from that little brick house east of that place, and the river-bed

was east of the little brick house between there and the railroad. From the brick house—there are two little brick houses there—to the railroad, he supposes is about one hundred yards or a little more, and the river was between the little brick house and the place where the railroad now is. Between Duraznito and White's Spur, where the little brick house is, the river did not bend off to the west in the earlier days, but it ran towards the east and made a turn at Duraznito Ranch, a place where Chapo Reyes lives, or did live when he was alive. There is a bend from the railroad about half a mile which would throw the old river pretty near half a mile east of where the railroad is now. There appears to be an error in this statement, because a little further along he says that he was speaking of the Reyes Ranch and the river was half a mile west of the railroad, a little more or less. Reyes' house is between White's Spur and Duraznito. The stage road at New Canutillo could not have been more than a quarter of a mile east of that. He knew the Estero de Sanguijuelas, and the river made turns back of New Canutillo and ran east of the estero, and at the estero was a high bluff under which there was a pond or a lake which he thinks must have been half a mile long. From Canutillo up to the bluff was called the Estero de Sanguijuelas. West of that spot the railroad now runs up where the channel of the river was at that time. Artesa means troughs, and the Bosque de Artesa was so called on account of the arroyo that went in there which they called the Arroyo de Artesa. That arroyo came from the western foot hills. It was a water-shed which carried the water into the river. He first knew that arroyo, he thinks, in '60 or '61. It was never a river. He could tell whether an arroyo had been a river or not—if it were a river it would be sand and the arroyo has mud. He assisted in making a map for this case. The surveyors made the map and he, as far as he knew where the river ran, showed those surveyors

There were others besides himself that they got information from, other witnesses. He showed the surveyors where he had seen the river in '57, and they made their map from some other information besides his. He has seen the map maybe as many as three times. He saw it at Post's office just twice, and supposes it is the map which is attached to plaintiff's petition. Practically it is the same as the facts given by him to the surveyor. There are certain variances he supposes, but practically it is identical with it. He did not go with the surveyors to make the survey, but was with other men who showed them as well as himself. Showed them where the river ran when they knew it, within the last six or eight months. He does not remember the date, but thinks part of the showing he did, might have been last year. He went down there with Mr. Post, he thinks, in 1912, and thinks it was in the fall sometime. He went with Jose Enriquez and Florencio Lucero. He cannot remember the witnesses he went with each time and he went several times. He thinks that Jose Enriquez is in the sixties. He supposes he has made the trip up and down the river in this investigation 15 or 20 times, and he has been with every squad of witnesses, and he found most of the witnesses. He has been representing the State of New Mexico in the neighborhood of five or six months. He began under Mr. Austin's directions before he did under those of the Attorney General for New Mexico. He went and saw those witnesses who represented the State of New Mexico through Mr. Catron, to bring for this case. Mr. Catron is a Senator for New Mexico and is an attorney in this case. He supposes that Mr. Austin was representing New Mexico as he told the witness that he had gone to see Mr. Chaves about it in the early part of this year, he thinks, but he does not remember exactly when. He supposes that Senator Catron is interested in the Santa Teresa Grant, because he was acting in that case before. He does not know that Mr. Catron is a part owner in that grant,

but he understands that he was. He knows Mr. Austin here and knows of no other person interested in that grant besides Mr. Austin and Mr. Catron. Indirectly, he supposes he is interested in his sister-in-law's interest, who is Mrs. Woody Van Patten. The witness did not have him go up there and take up some land, and did not suggest to him that he take up some land. He bought that before the witness knew anything about it. The piece that he had was the interest of John whose name he can't remember. A man who had a patent up there. The witness was not assisting him in holding that land. About eight months ago he thinks he began this matter of finding witnesses, not to place the river on the east side of the valley, but to find witnesses who knew where the river ran in 1850, which is not to place the river, but to show where the river ran in 1850 and 1851, and up to the time that it changed. Mr. Austin bore the early expenses, charge of witnesses, automobile hire, etc., in the beginning of this investigation, with the understanding that he should get it back from the State of New Mexico. He did not always take the witnesses to the east side of the valley, but took them on both sides so that they could see both sides. He took the witnesses around, starting in at Anthony and going right around and coming back at Anthony, and he took them there, with maybe two or three exceptions. He took the sixteen witnesses whose testimony has been taken entirely around the valley with few exceptions. There might have been five or six, but most of them he took straight around, from Alamitos all around. He has not read the record of the evidence that has been taken here as it was none of his business. He is interested, but he has no right to go and see what some witnesses testified to, and he has not talked to the witnesses about the case outside of the court room, because he had no right to do it, and he understands a man has no right to go and ask a witness what he has testified. At this point on page 644 of the record,

it appears that the Attorney General for New Mexico, called the attention of the counsel for Texas to the fact that at the beginning he insisted upon the application of the ordinary rule as to witnesses, that they should not be in the court room, nor talk to each other as to what they were going to testify, or had testified to, and it would have been a violation of that rule for Colonel Van Patten to talk with them.

He has talked to the witnesses frequently and eaten with several of them, and procured them their quarters, and brought them from where they lived to El Paso, and Mr. Chaves has brought them to court from where they were, from the hotel where they were stopping. Mr. Chaves is the interpreter for New Mexico now. He took witnesses to the west side of the valley so that they could see both sides and pointed it out as they knew it, the valley, in those times in 1850. Because he knew they were going to try to prove that the river ran on the west side of the valley and he had heard several people state that the river had run prior to the 50's and straight along until now, on the other side. Out from above Alamitos down to Piedras Paradas. This man did not claim to know that it ran on the other side, but he was told that they had heard people say that in this former case they wanted to prove the case that was formerly here, that it had run on the other side. He has heard it talked about a great deal about its being placed on the other side of the valley. He cannot remember the names of persons who said that the river ran on the west side of the valley. From '64 until '84, the river was on the west side, but when he is speaking about the old river he is speaking of from '64 back. He found the river-bed of from '64 to '84 and saw where it had changed back and forth several times. In some places the river-beds are there and in some places they are not. The '64 river ran pretty close to the Corral de Trosas, because it took away the Corral de Trosas. The river of '64 ran in

and formed a lake at the Loma de Arena. He is speaking now of the high sand-hill near Cobrena. It formed a big bend there. It did not run near Cobrena, but east of it. Cobrena is a hill and it ran east of that some distance and in front of Cuarones, a pretty good distance from the Alto de los Cuarones, more than three or four hundred yards, but he could not give the exact distance. He then asked counsel if he is speaking about Cobrena, which was answered in the affirmative, and he then said, it might have been a half a mile. Being asked how near was the river of '64 to the Corral de Tapia, he says, it washed out and during that time was right up against Santa Teresa and the Corral de Tapia is on top of the hill at the north end of Santa Teresa. Santa Teresa was a sand dune, a very high sand hill which ran out above Piedras Paradas and ran in an easterly direction and formed a place like that (bending his arm in the shape of a horseshoe). It jutted out towards the valley and the river ran against it, and took it out so that now that hill is forty or fifty feet high. During the twenty years from '64 to '84, they had several big floods. in fact the biggest floods he has ever known. It has not always been the habit of the Rio Grande to make changes in the flood time. Prior to '62 and '64 he knew of no changes. Since '64 it has been changing backward and forward all the time. From '57 to '62, he never noticed any changes and he is positive there were no changes until '62 when the river had a very big flood. It made several changes and in '64 it went back of the town of Mesilla toward the foot hills on the west side and changed Mesilla to the east side of the river where Las Cruces is. Formerly Las Cruces was on one side and Mesilla on the other. In '62 the river went into Santo Tomas below Mesilla and would have taken out Mesilla had it not been for the Confederate troops who stopped the breach that kept it from going into Mesilla, but it went into Santo Tomas below Mesilla and virtually

ruined that town and struck La Mesa and ruined some things there. It made changes below Alamitos, but not below White's Ranch, but above there. In '62 was a very large flood and in '64 one still larger, and then it broke through Mesilla and through the El Paso or Juarez dam. Santa Teresa was so called on account of its being a height, a prominent place. The Mexicans always have the name of a saint for a prominent place. It is a stretch of sand, but is on a very high prominent place and they gave it this name to locate the place. He cannot say that the name has any reference to the Santa Teresa Grant. They might have named the hill from the grant, but he thinks the hill was named Santa Teresa and from that they named the Santa Teresa Grant. When he first went up the river to work, he does not remember the Magoffin farm, and he does not remember that he ever had it pointed out to him. He remembers that there were stock ranches, which were all he knew there. He does not remember a place which had been cleared in the 50's, the earlier 50's, and put in crops. He does not remember any farm on the east side of the river in 1858, but later there were two or three batches of men went there on farms. They started above Anthony and had one place and down below they had another on the east side of the river. They started to build ditches. The earliest year that he saw that, he thinks was about '61 or '62. He did not go over the ground, but he knew several of the people who went from Mesilla. At that time Ramon Gonzales had a stock ranch there and those people were above him a short distance, as far as Alamitos and above Alamitos. He could see where they were working at the farms. He cannot remember how many acres they seemed to have cleared there in '61. He saw their camps there and knows that some of them lived at Mesilla and some came up from San Ignacio. He knew nothing about a farm in the early 50's near Canutillo only from hearsay. He knew that on the other side of the river

Juan de Dios Sais and Barragan, and Florencio Lucero had land cultivated, but he was not on their land. Sais was on the west side of the river and so were the others. Sais was a farmer and had a few head of stock. The river ran some distance from the east side of his land. That was at Alamo Naranjo. Being asked in Question 452 how far the river was from Sais' house, he answers, that he did not know his house. He never went to his house at that time. Being asked how he knows the relation of the river to the house of Sais, he says, "Because Lucero used to live right below Canutillo and used to cross there and I knew him". Lucero lived there when the witness was running a coach in 1857. He very often talked with people about the history of the different places. When he was talking with these people he was a young fellow and wanted to post himself about the country, and asked everybody about the different names of the different places. He was learning Spanish and tried every place he went to find out about the different towns and about the history and how it originated, because every one of those places were historical places. He did not begin in 1857 to locate the river '50, but he asked about the river and about everything pertaining to every town that was on the river. He did not ask anybody if the river had ever been surveyed. He knew that because he had read it and knew of it from the Treaty of Guadalupe Hidalgo, and that the flag had been raised in '54, and that Las Cruces was an American town and had a consul. He does not remember who made that survey. He knew Emory was the surveyor because he knew friends of his, and he knew the Rio Grande was the line between Mexico and the United States up to '54, and everything from Dona Ana down on the west side was Mexico. He never saw the monument that was erected up there by the joint commission, but he has heard of it. He does not know where they ran that line and never knew, that he recalls now. In locating the bed of the river of '50 where the

Santa Fe railroad is now, he did not take the line of Emory into consideration more than the river being the line between Mexico and the United States. Being asked in Question 473 why he wholly disregarded Emory's work in locating the river through the valley, he answers, evidently thinking of the early years after he came to the country, that he had no reason in particular, only that one side of the river which he was running on belonged to the United States by conquest and the other afterwards by the Gadsden Purchase. He says it was prior to '54 that some line was run up above Dona Ana. In July, 1854, was when the historic flag was raised. The flag was raised at Mesilla when the United States took formal possession. Men with their families went out of Mesilla and went to Juarez so as not to become citizens of the United States. He does not know that they went to Mesilla when that place was in Old Mexico to get out of the United States. Being asked in Question 479 if in 1913 he attempted to locate the river of '50 without regard to the joint survey between the United States and Mexico, he says, that he did not, and in answer to the next question he says that what he did do, he located it where people said the river ran prior to '57 and he knew himself where it did run in '57. He knows the river made frequent changes, but to his knowledge they were made only from '62 this way. He does not know that he was going contrary to where the joint survey put the river. He understood they were showing where the river ran, but he understands the joint survey made the river the line between the two countries. He did not know where the Emory survey put the river, but only knows the river made the line, and he knows that surveyors made the survey only from hearsay, but he does know the river was made the line between the two countries. In Question 484, he is asked if Emory surveyed a line in '51 and located the river of '50, the exact meanders of that old river would be better evidence to locate it

than some man's memory who could not tell the calendar years, wouldn't it? And to this question he does not make a direct answer, but says that if that man made the river the line, as we all understand it, and certainly he has read it many times that the river was the line and was surveyed by Emory and his associates. It may be said here that no evidence has been produced as to the survey of the river by Emory. He says he did believe that he was following that line when he was there with the Mexican and Indian witnesses. When he went out and located the river by these witnesses, he was not looking for the Emory line, but was looking for where the river ran prior to '57, and he says it is positive that if they located the river where it ran, that that was the survey. He was getting the river, he was not getting any line. He knew the river was the line. He did not have Emory's map, nor any field notes of his survey, nor any data of that commission. Being then asked how he could tell whether he was following the line or not, he says, he was trying to follow the river of prior to '57, from '50 or '47, from the time of the war or the conquest. In response to Question 495, which is not very clear, he says, that he did not see the river, but the witnesses told him that the river virtually ran at that time the same as it did in '51 and as it did in '57. Of course, there might be some small changes, but it was practically the same thing. Being asked, what years are involved in this controversy, he says, from '51 up to '64; and being asked, if anything between those years which locates the river is pertinent in this inquiry, in his opinion, he answers in the affirmative, and that is why he procured witnesses from '51 until '61, or anything prior to '51. He is then asked what he would do with the proposition if there is a difference of half a mile, and he says he would do nothing with it. He took the men there to point out where they saw the river and they pointed it out to the surveyors and to him, where the river ran.

He says he took about sixty witnesses in all, and that he has tried to be busy. He has charge of the men and the witnesses and went with them, and they went such places as he took them and several times they walked over every inch of it. They and he, both walked over every inch of it, from Alamitos down on both sides. He has walked several times with the witnesses. Counsel then tells him in Question 508, "You have not walked it with any man throughout its entire distance, who has testified in this case", and he answers, Yes, sir. And counsel courteously says, "Well, I say, you have not. Now you name me one." The witness then says he has walked with several men, with Juan de Dios Sais, Jose Enriquez, Florencio Lucero, several of them. There were places they rode and places they walked, but in the majority of places he walked it most every inch. He walked with Catarino Martinez, and with a great many others he does not remember. They had a wagon and camped and would go along; and being asked if he walked all the entire distance with men who have testified here, he says, not all the way; that the man Juan de Dios Sais is one that has testified and he walked with him. And being asked how many men were in the party with Juan de Dios Sais, he says, six or seven, and counsel then, in Question 516, says, "and that whole gang walked the entire distance around tnat whole territory on both sides of the river?" The witness answers in the affirmative, but adds that two or three of the older ones would ride part of the way for awhile, whenever it was convenient for them to ride. He is asked if this last witness is one of the men who walked all the way around, whose name was Calistro Tarin, and after ascertaining his name from one of the examiners, counsel asked, "Did he walk", and the witness answers in the affirmative, that he walked part and rode in the automobile, and they would go to certain places. He walked to Alamitos and there were places he could see from the automobile, and from Alamitos he walked

down the channel of the river, to the bridge, and then went in the automoile to the heights of Las Brujas, and from there he pointed out the bend, and from there they went to Old Canutillo and got out of the automobile and went through the fence and crossed the railroad track and through another fence and went to the ruins of Salado's house and the spring. They went down to the cottonwood trees where old Duraznito was and then they went down right along the old river to the place called Salitre, and they got off at this end of the salitre where they could travel the road, and they went up on the west fork of the road on top of the hills and then came back over the east fork and saw that, then they came down toward White's Ranch and over the hill that led down where the old road went up from the hill road. Then they turned to the right a short distance and got in the automobile and came down to White's Ranch. He knows that Tarin went that way with them. He cannot name and trace the movements of every man who walked around the circle with him, because there were many different witnesses. Being asked to name the seven who went around the whole circuit in one bunch, he names Jose Enriquez, Vicente Garcia, Catarino Martinez, Jose Garcia, Juan de Dios Sais, and was then interrupted by a question, but adds that he cannot remember the others right now. There were seven or eight that went with them in the wagon. They walked entirely around the circuit with very few exceptions. The old ones, they let them ride. They rode along where they could see it. Sais did not walk all the way around, but he rode horseback, and Jose Enriquez rode a horse. The witness was afoot. The witness did not have a horse, and Catarino Martinez did not, Vicente Garcia did not, and Jose Garcia did not. Being asked if he had a double purpose to prove where the river ran on the east side, and that it did not run on the west side, he says, that he certainly wanted to see that it did not run on both sides at once. His

idea was that it ran on the east side, and he did this for his sister-in-law and his brother who claimed that the river ran on the west side. They said several times they had land taken from them and that the contention was that the land was not in the United States land office because it was in Texas. Their title was derived from the United States land office at Las Cruces. They did not say that prior to '52 the river was there, but he told them that from '57 this way, it was on the east side instead of the west side. There is clearly some error in these answers of the witness, because in Question 532, counsel asked, "Why were they contending that your statement was untrue?" And he says, they were not, that he stated that the river ran on the east side. Their land was on the west side and they said that land belonged to the State of Texas and not to the United States. They claim it is in New Mexico. He says he knows nothing about the pleading map. All their land, if the river ran on the west, will belong to Texas and they will lose their land. If the river is proven to have been on this side, they will get their land. Being shown a paper and a map, he says that he has seen that map, but has never examined it. It appears that the map shown him is attached to the bill of complaint. He says he saw the map, as counsel was holding it up to him, and he had a map like that that he gave to Mr. Reber, but he never examined it at all. It was sent to him from Santa Fe and he knew it was the basis of this suit and he naturally supposed that the object would be to have the evidence correspond to that pleading, because the map was made from the evidence, as he understands, the evidence that was given to the surveyors. He thinks the map was made to suit the evidence, that they went and located the river according to the testimony of the witnesses where the river ran, those witnesses he took with him. Being asked if that is a conclusion or a guess, he says it is no guess, but not a positive conclusion that they made it, but it

is supposed that they made it correctly. They are surveyors and he is not. The witnesses showed the surveyors where the river ran. The surveyors located it according to the evidence that they received and from other evidence and from the maps they had. He says they surveyed two or three months. He supposes they did not make any change, but he knows they went there at different times and the different witnesses would go and show them where they had known and seen the river from 1864 back to the time they first knew it. He is not a surveyor and there is no witness who has testified, as he understands, who is a surveyor. The witnesses went and showed the surveyors where the river ran as they knew it, and he does not know whether the surveyors located the river from that or not, but he supposes they took the evidence of those witnesses as to where the river ran. They had the written evidence, but the witnesses, themselves, showed the surveyors where the river ran. Those witnesses, some of them, had already been over the river and showed him and others where the river ran, and afterwards were called back to show the surveyors where the river ran. He did not give the surveyors any written statement as to what he knew, but he told them and they took it down as he showed them the river. He gave his testimony here to a notary public asking the questions. He does not know that he was sworn, but he is pretty positive he was, so he could send it up to Mr. Clancy. He does not know that he swore to it, but he knows that he made a written statement about eight months ago. He supposes it was needed in Santa Fe so the Attorney General could make his complaint, but he does not know what it was for. The witness supposes he wanted to know where the river ran up to date from the time it belonged to the United States, and in that paper he told of the changes the river had made from 1862 up to 1906. He has no copy of that paper. These witnesses were sworn, some of them here, and some of

them in Las Cruces, and being asked, why, he says, so that they could not go back on what they said, and we would have their evidence in writing. The most of them were sworn and he thinks all of them. Being asked, if he had much trouble in holding these witnesses together as to the location of the river-bed, he says, he did not try to hold them together. He let each man tell for himself what he knew. He did not know anything prior to '57, or as much as they did, but from this way on, he did know. In Question 593, it is suggested to him that he should say to a man, the river ran here in '57 and there was no change prior to '50 and '57, and being asked if that is not fair, he says, no, they told him where the river ran prior to '57, and he knows as well as anybody from '57. Being asked if he doesn't know better than anybody, he says, that he considers that he does. He says from '57 this way, he did not need any Mexicans or Indians, or anybody else, to tell him about the river, but he had them go to show where the river was prior to '57 and up to '64, when that big raise tore out the towns which they all knew as well as he did. He discussed these matters with them, but he did not ask them to agree. He asked each man to state what he knew about it. He did not find they all agreed with him. There are little changes at different places he supposes. He does not think that they all agree identically, but they have different versions and changes, and he certainly has not asked them to agree with him. If a witness told him the river was on the other side, he certainly would not bring him here to testify, but would leave that for counsel for Texas to do. He never saw any map of the survey of the early river. In Question 605, counsel says to him, that he did not care anything about whether they found anything or not under the Treaty of Guadalupe Hidalgo, but he says, that he did care, he wanted them to show where the river ran. The river was the line, as he understands the treaty, and the witnesses were trying to show

where the river ran at that time, at the time of the treaty, and from that time until it made the first change. He has never seen the result of the survey under the treaty, and never went over the surveys at all. He thinks the survey placed the river where he knows the river ran from '57 this way, and where these Mexican witnesses told him it ran prior to '57. On page 662 he is badgered with questions about the treaty and about the survey under the treaty, from all of which it seems that he knew nothing about any surveys, but only about what was in the Treaty of Guadalupe Hidalgo. He located the river as he knew it from '57 this way, and being told that '57 has nothing to do with this case, he says, that it has as far as he is concerned. He knew nothing about it prior to that date. He is then asked, for some reason which has never been disclosed, if he was ever a chain bearer for any surveys up in the valley, and he answers in the negative. He remembers of once being up with Parson Tayes, who was a surveyor and a preacher, but that was in the 70's. He was not a chain bearer, but just happened there. He was hunting and saw the survey outfit there, and that is the only survey he remembers about. He thinks he was the only Eugene Van Patten in this country. The other man hunting with him was Judge Newcomb. He does not remember of ever being a chain bearer. He is asked if he knows the county surveyor of El Paso County, but he does not remember him, although he may have known him. He does not remember Conley, but he does remember a man named Johnny Hale. He may have been chain bearer, but he does not remember it. There is nothing dishonorable about it, but he has never been with a survey. He has carried a chain for a day or two, or something like that. He has done that at his own ranch and at Isaac's ranch, just being up there and voluntarily took the chain and carried it, but he was not employed as a chain bearer. He then is asked if he was not on

the second of August, 1871, chain bearer with John Hale, and he says he does not remember it, if he was, and then he is asked if on that day he served as chain bearer in at least two surveys of land, and he says he does not remember it. He remembers once at Duraznito—at Canutillo, he was hunting there and there was a surveying party under this man Tayes who was a preacher, and a surveyor. He remembers Newcomb and Fountain and he was hunting there at Duraznito. In securing the testimony for the location of the river, he did not take into consideration any map of the Santa Teresa Grant, or any map or plat, nor the field notes, nor any survey platted on the other side of the river. He took the history of these people as they knew it at that time. Just what they told him they knew, and other than that he made no investigation. He does not remember in his consultation with interested persons that the question of former maps and surveys ever came up. There was discussion as to the line of where the river ran, but not of surveys. He did not understand that he was to forget anything of that kind, as counsel pleasantly asks him, and did not try to, and, in the language of examining counsel, he says, that he never was told to.

After the recess, it appears on page 665, that the Attorney General for New Mexico, suggested to counsel for Texas that Colonel Van Patten could now tell him approximately when he first made the trip with the witnesses and with Surveyor Post, which he did not remember and did not tell in the morning, but no attention was paid to this suggestion.

He says that at Alamitos they prepared an old shack for the stage station in 1857. There was no stage line prior to that time that he knows of. The stage line was known as the Overland Mail, Butterfield Line. It never became the Wells Fargo and Company Express to his knowledge. It moved away from here in '60 and went

over the northern route through Denver. There was a shack at Alamitos, when he first went up there. It had been an old cattle ranch and he presumes there was an old jacal there. It is from hearsay that it was a cattle ranch, but he knows there was a little shack there. He does not know when the acequia was taken out there, but he knows he saw some men working there, but he does not know when it was. They were working putting in a farm then, a year or two after he came there. He does not know where they took out the ditch, but he is sure he saw them working on the acequia or ditch between the river and the hills, in the lowland. He does not know what land was to be irrigated by it, but it was adjacent to Anthony, and he knew one of the men who worked on it. His name was Claro Lucero, and that was before 1860. He does not know where that man's land was which was irrigated by that ditch, but believes it was north of Anthony. The river was running at Anthony then, a few hundred feet, at that time, just above Anthony. Between Anthony and Alamitos there was not a sufficient body of land to justify bringing the ditch, because below Alamitos and right to Anthony it was but a few hundred feet from the hills to the river. It was a small ditch. They certainly had something above to irrigate. They could have irrigated the bend below Anthony. Being asked if he admits a bend below Anthony, he says, he knows there is a bend below Anthony. It was a very small bend, a short bend, at that time when he knew it. Anthony was built in the 80's and there was no town there, but just that station of the overland mail, at the time he has reference to. There was no house between Canutillo Viejo and Alamitos, nothing but a stage road on the hill. The river was just west of the road at Anthony. The road ran from Alamitos down and made this turn and went down a little way to the west of where La Tuna station is, and made a little bend below there and turned over to the foot hills. The hills are

still there where the road ran, and it ran a little east and then turned down by La Bruja. That is where the road ran which is on top of the foot hills. La Tuna is the same town of Anthony, only within the Texas line it is called La Tuna, Texas, and Anthony, New Mexico. La Tuna and Anthony are all one town with two names for one station, one in New Mexico and the other in Texas. The road ran west of where La Tuna and Anthony now are, about a mile or a little less and then turned and went on top of the edge of the foothills down where the river makes a turn and went to La Bruja and in to where the brick kiln now is at Vinton. He knew the Jose Maria Garcia Island which was some distance from La Tuna in a westerly direction. He thinks the arroyos which came from the mountains there had made the island and the river would back in there with water. It was owned by Jose Maria Garcia. The river was east of it, a long distance from it. The existence of the island depended upon the arroyo, because it was an outlet and water-shed from the west side of the river, and carried the water to the river. He says he did not put the river of '64 to the west of that island, but said that the island was west of the river. Counsel, then, in Question 722 tells him that he is talking of the river of '64 and that he, the witness, put it by Los Amoles, to which he answers, that if he did, he made a mistake because the island prior to '64 was west of the river and the river took the island out, and there was no island left there. The river of '64 took out the island and leveled it up. The island was just east of the old town of Amoles, a mile or a mile and a half. The old town of Amoles lasted until '64, and being told in Question 731, that there was never any movement of that town until the flood of '64, he says, it might have been taken in '62, but it was taken in '62 or '64. He says there was a town there in '62, but he is not positive whether it was destroyed. He knows between '62 and '64 it was destroyed by the

river. From the old town of Amoles, prior to '62, it must have been at least a mile to the river of '57. From the old town of Amoles to the railway track, he estimates the distance as two miles, a mile and a half, or two miles. He hunted and fished a good deal in the early days and caught fish in the pond or estero of Jose Maria Garcia and in the river. The Estero of Garcia for a short distance, was good fishing. It was not so big and wide that they had to use a pontoon or ferry on it. You could go in there with a seine and wade around and it was in places but little wider than this court room. It would take a big arroyo to carry the water from those plains on the west side of the river. Today the Arroyo Frijol carries it down to Santa Teresa. The Arroyo de los Difuntos and the old Arroyo Artesa used to, but it has been filled up. The Arroyo de Difuntos was an arroyo before the river ran in there, but the river in '64 took possession of that arroyo. At pages 672 to 676, counsel and the witness engage in discussion as to the effect of the destruction of the dam at El Paso upon the force of the river up above, and as to the fall of the river and the fall up above Fort Seldon, but did not develop any facts of importance. He says that prior to '64 they had regular spring floods, but not such a one, and they have not had one since '64, like that. He says he was at the town of Santo Tomas when the water came in there and it came into the town, suddenly, and that he is talking about '62. At this point on pages 676 and 677, there seems to be confusion between '84 and '62. He says that the channel of last summer made by a flood is not the river-bed of 1857. He says that there is a channel from New Canutillo down, which was made in the last two years and that he has not had his men walking up and down that channel two years old, but up and down the channel where the river originally ran and it is about the same place that the old channel ran, as they stated, and this new channel is about where the old channel used to

run. It was identical and it is the place, he says, where the river ran in '57. In Question 834, counsel tells him that he has had the witnesses tell this court, or this commission, that the river-bed today at that place is from two to five feet deep, to which he answers that he does not know how deep they say it is. He knows that the river ran a portion of the way below New Canutillo almost identically as it did in '57. He says that that new channel running from the bridge down has been made within the last two years and is now running where he formerly saw the river in '57 and '58, but a couple of years ago it used to run just below Canutillo and strike to the west, but it has changed back to the east and he is talking about the river-bed. Water is running in the river now at Canutillo Nuevo along the railroad track for a pretty good distance and it is flowing there now. From Duraznito to White's Ranch there is no river running there now. The present river is west of where the river formerly ran, a very short distance. Then he says the new river is a long distance from where the old river ran. In places it is a short distance and in others a good long distance. At White's Spur the present river, from where the river was when he first knew it, may be one hundred yards or one hundred and fifty. There is clearly some misunderstanding at this point, because in answer to Question 845, he says that the river is a long distance, and he should think it is about a mile and a half, or two miles. He says that some dykes have been put in above the brick house which forces the river to the west, put in to turn the river so that in high water the river would not run in there, and as he understands, they were put there to keep any water from coming down and making a channel and ruining that brick yard and that old house, and it certainly effectuated its purpose. The dykes did keep the water out. He does not know that the dyke did not keep the water out, but that it was put there to keep it out and has kept it out, because it is not

running in there. The dykes have been there two or three years. Counsel at this point, on pages 680 and 681, engaged in a discussion as to floods and their effects upon the river and the river banks, without eliciting any facts of importance. He knows where there is a road out west of Anthony and a farm on that road. He does not know that this past summer the water dug and ate for acres and acres of land there when there was not a particle of flood over the country, but he does know the freshet came down. He remembers the arroyo called Artesa and it was opposite what was called Sanguijuelas and it was a big arroyo that carried the flood waters into the Rio Grande from the west side of the river from the hills. He says he has seen it running from the hills. The whole west side of the river and those plains shed water down into the valley and those arroyos are caused by that water taking its outlet into the river. Being asked in Question 908, if he means to say the little infrequent rain water we have in this country with no snow, would wash an arroyo across that entire valley towards the railroad, he says, that we do not have the rains we used to have. We used to have monthly rains here, terrific rains, you might say torrential. We had heavy rains that would tear down houses. There was one at Anthony not more than six months ago that ran down there and tore down the fields that had been planted. The Arroyo Artesa has been in existence until the last eight or ten years, until the Refugio Grant was reduced and people bought lands in there and filled up the arroyo and dyked it and planted it. The water still runs at the Arroyo Frijol and the Arroyo de los Difuntos, and that carries it clear down to Santa Teresa. He first saw Artesa in '59 and '60 and many times in '61 and '62 he went up and down it. He does not know that in '59 surveying was going on by that arroyo. The latter part of '59 he was at Pinos Altos and the early part of '59 he was at Mesilla. After he ceased to be a stage man,

he traveled up and down that river surely every year. Up and down the road along the river. He went over that road afoot and horseback many times coming to Paso del Norte. It has been his principal business many years, hunting the Indians and not locating a river, but he was traveling up and down the river and across the river. He was chief of scouts for a good many years. He was here with General Buell and was Lieutenant Colonel of the First New Mexico Cavalry, and that was their business, that is, hunting Indians. He and Colonel Fountain were detailed to go with him, that is, General Buell. They had a battalion and went to La Union where Amoles now is, and he was a couple of months guarding Potrillo Pass with his battalion. He was not with Colmenero when he made his wonderful Indian fight, but he has heard it talked of. He had several of those Indians with him in his campaign, but he never had Colmenero with him. He has crossed from the El Paso road to the Alamo Naranjo and has cut across from Santa Teresa and has crossed in front of there straight from east to west last July. He crossed two or three rivers that he knew had been changed lately, within the last ten or twelve years. His information and knowledge was not sufficient to tell when the river made its change, but he can tell it has been recently by there being no trees there. It takes a cottonwood tree a good many years, but you can tell in ten or twelve years whether they are forty or fifty years old or not by their bark, by their roots, and by the trees themselves. He has seen cottonwoods grow ten feet in a year, but he does not think he has seen them grow ten more feet the next year. He never saw cottonwood trees grow thirty feet high in five years. He thinks it would take at least fifteen or twenty years for a cottonwood to grow thirty feet. He has planted many cottonwoods and has planted more cottonwood trees than any American in this country, and got good results and bad results. Wherever he goes and has houses, he plants cottonwood

trees. He has been at Alamogordo and knows the grove above that town—all planted since the railroad was built there. Counsel says in Question 957, "And averaged 60 feet or more feet tall?" He says, that he has seen it but a couple of times in the last ten years and does not think they are that tall. They were young trees when he last saw them, when they were four or five years old. Jose Enriquez lives above La Union, about a mile, more or less, on a hill. His house has been there for a great many years. The farm is down below in the valley. He lives up over his farm. His house from old Amoles, is south, straight across the valley, southeast. The old town of Amoles is a little southeast of his house. His father's name was Simon Enriquez and he lived at the old town of Amoles. The only person living there now is Monica Enriquez, a sister of Jose. She lives but a very short distance from the old town spot. Being asked who has a ranch east of that old town, he says Judge Parker, a short distance east of Monica's, and there is no arroyo or river-bed between Judge Parker's place and the old town of Amoles. He says right west of Judge Parker's present house is the present river. He does not remember that between where the church of Amoles was and where the old houses were and the present ranch house of Judge Parker, there is now what shows to be an old river-bed, but he thinks not, and he does not remember any depression there. He has been up and down there many times and has not noticed it. He knows where Judge Parker's ranch house is and where the old church used to be, and the old town, and he is trying to say he knows these old places and does not know any river there, or any arroyo or river-bed. The river tore out the Amoles road there and run in there when Amoles was taken out, and he does not think it left a channel, but he thinks it since filled up. The river was there, and in Question 967, counsel says, "Well, it dug a channel, didn't it?" To which the witness answers, "Yes, sir; but you say dis-

tinctly to be seen, and I say that the channel of the river that washed out Amoles is filled in and has leveled up". The river washed out Amoles in 1864, and it stayed there for some time, but afterwards it changed its course and filled in there. They are planting all those lands in there and it is pretty level. The river ran somewhere near there in '84, or sometime in the '80's, because he remembers that they built a ditch taken out above Jose Enriquez' house and carried it to near the town of La Union. The ditch he speaks of runs right over to Jose Enriquez' house, down to where the present town of La Union is, to the foothills and irrigated the farms there below Union. He is then asked if that new ditch is called the Arroyo Frijol, and he says it did not go down to the Arroyo Frijol, but he thinks it went into the Arroyo Artesa. He knows this about the ditch, that for several years they were quarreling and when he was sheriff of the county he remembers of a dispute between a man named Jose Maria DeCamara, who he thinks is an Italian, and a man named Catarino Martinez. They had a row there about the ditch. Being asked how wide is the valley where the Canutillo Grant is, he says, that the Canutillo Grant is supposed to be about the old Canutillo place, and he thinks there is one of the narrowest places from foothill to foothill, but he cannot give the distance. When he was a conductor on the stage line it was his employment to collect the fares and look after things. The driver's business was to take care of the horses, and he, the witness, took care of the mail, and as to the Indians, everybody looked out for himself. If the Indians were taking in a coach they would take the money and everything that was on the coach, and get away with the men in there, supposed to be white men. They were not particular for money, but for the stock and the things that the coach carried. Being asked in Question 1009, which was the more important thing, paying attention to his duties or paying attention to where the river touched

the hills, he answers, evidently having in mind only the Indians, that they watched everything. They located every point where there was any danger that they would take the coach in, and they had to pay strict attention to everything because the Indians would lie in the grass and behind the trees, and they had to pay attention to everything, and the main thing was looking after their own scalps. And then in Question 1011, which was, that the particular location of the river from White's Ranch to Alamitos in those days was of no possible importance, he answers, that it was and they watched not only to Alamitos, but beyond, all the way from here to Tucson, every turn and curve or anything where there was liable to be any danger. There was no bosque on the east side of the river, but there were lots of arroyos and bluffs, and there was danger everywhere they went in those days. The Indians were here below them, between them and the river and along the banks of the river when the river was low. There was no special place they had. There were a thousand places between White's Ranch and Alamitos where an Indian could hide himself, and they were on both sides of the road. They were traveling below the hills. The river was west of them and they would travel below the higher hills to the east of the river. They would travel on the ladera whenever there was a ladera, and they traveled on the lower end of the slopes to keep away from the hills as much as they could. He does not think that some of those slopes are nearly a mile long from east to west. Some of them are a mile, but they traveled on the lower sides of the slopes where they could find the levelest road. They traveled as near the river as they possibly could. He does not know when the old Canutillo Grant was first laid on the ground, but he has heard it was in 1838, and he does not know when it was surveyed. He knows that west of Canutillo those people had farms on the west side of the river, and he saw no farms on the east side of the river.

In late years this Hale and his wife and her father used to have a farm there just above White's Ranch, some time in the 80's. They were farming right in a portion of the old river of '57 and they are farming there now, above White's Spur where they are now living. The children are grandchildren of Chapo Reyes. The witness sees them there often. That is the first farm he knew in the valley on the east side. In '57 and '58 those places were stock ranches. There was one that belonged to a man named Carabajal, near Alamitos, and at White's Ranch and on the opposite side. The people from Juarez herded their stock in the bend called Borrego Bend on the other side. They would send their stock up there and would have what they called a town herder. On the east side at White's Ranch he saw a herd of goats when he was going up and down, and just above White's Ranch there was a shack which had goats there. They were not White's goats, they were Mexicans' goats and they ran their goats on the hills and in the valley. They crossed the river in the time when the river was low and they could cross in the autumn. The goats came in the foothills because there was plenty of grass and sage brush and plenty of grama. Counsel in Question 1062, says that he thought the witness would leave the goats a little patch of valley land on the east side, to which the witness answers, that he does not think he will, that he does not think it was there, and he wants to testify as near right as he can. He walked down with witnesses from Duraznito in the river-bed to White's Ranch, where they supposed the old channel to be. Those people were showing them and he walked down with the crowd there. They walked to where the old channel was as near as they possibly could, from Alamitos down to White's Ranch. Since 1857 the valley across there has been raised since it changed six or seven feet. He does not think that it has been raised 15 or 18 feet, but in places you can see the old channel there near the foothills. He knows that the rail-

road has raised its track several times. He says there are places in the Santa Fe road-bed which runs right where the river did run. He had the witnesses on the west side of the railroad. The two fences they went through, both fences, and they walked right down near it and every time they came to any place when he had them in the automobile, he would make them go through the fence and show where they had seen the river and point it out. Being asked, he repeats that he had been register of the United States land office, and states briefly what the duties of the register are. He held that office for nearly four years, from 1906 to 1909. He did not know anything about Texas patents of land in the valley. He had nothing to do with them. He knew that Texas had land and the land office at Las Cruces issues patents to people in the lower valley on the west side of the railroad, on the west side of the river. He says that west of Canutillo there was one application for land of John Graham that he remembers of, and there was some dispute about that. That was southwest of Canutillo. It was below Piedras Paradas and in a southwesterly direction from Canutillo. It was south by east of Piedras Paradas Southwest. He then says that it is south a little by east of Canutillo, as near as he can give the direction. After some immaterial questioning which shows a confusion between Piedras Paradas and Canutillo, he finally says that he never had an application which interfered with a Texas patent that he knows of. He remembers a dispute between a man named Kezer and the brick yard. It was in the land office and was a dispute between the brick yard people and Mr. Kezer in relation to a mineral entry that they made on Mr. Kezer's property, which Kezer claimed, and they brought in rocks and minerals to prove that it could be located as mineral land. That is what the dispute between Kezer and the brick company was. He does not remember about others. It was prior to his time in the office that the Santa Teresa Grant was claimed to the

Old Mexico line. Being asked when he first became connected in any way with the Santa Teresa people, he says, that he had been connected with Mr. Austin and Mr. Catron for many years. He says he was with them as a witness and helping them get evidence for Santa Teresa in the Court of Private Land Claims. Being asked if he got evidence in the first part of that case to carry the Grant line to the line of Old Mexico, he says, he does not think he was in the first part. If he ever saw a map when the Santa Teresa was claimed to run to the Old Mexico line, he does not remember it. He does not know the extent of the first claim entered in the Court of Claims at Santa Fe for the Santa Teresa Grant. Prior to the trial in that case at Santa Fe he was employed to secure evidence. He thinks the trial was about ten or eleven years ago. He did not at that time become familiar with the grant which was established in the court at Juarez, and never heard anything about a proceeding in the court at Juarez to reestablish the grant. He went over the land with the witnesses who knew the grant and the lines of the grant. He knew Garcia and Escobar, and he never, that he remembers, saw any papers which described the eastern boundary of the grant. All he knows about it is what was in the minds of the witnesses who went there and showed him the line. They certainly showed him the western line, but whether it was a straight or a zig-zag line, he does not remember. The line from west to east on the north, as he understands it, ran straight. As to the eastern boundary of the grant, he cannot tell now, but it ran on the east side of the present river, or the river where it was running at that time. He got witnesses and they testified and showed the surveyor where the lines ran. He was not with the surveyor. He did not tell the witnesses that they would be governed by the location of the river for the eastern boundary of the Santa Teresa. He was not the manager of that affair. The surveyors were, and the witnesses went with the surveyor. He did

not go with the surveyor, he simply got the witnesses who knew the Escobar and Garcia Grant and knew where it was. He went on the ground before the witnesses went with the surveyor, as he remembers, with Jesus Enriquez and other men. They went down clear to El Paso and those witnesses testified. He was on the west and on the north line with Jesus Enriquez. He does not remember whom he was with on the east boundary line, and never went over the line on the east boundary that he remembers. He did go over the north boundary line with Jesus Enriquez. He went to a place near Cobrena and in an easterly direction to near where New Canutillo now is. He started at Cobrena on top of the hill on the west side, and went down to just below Santa Teresa and somewhere in between Piedras Paradas, and from there came into Juarez, and thence to El Paso. He remembers that they came down more or less with the boundary, and as that man Enriquez knew them. He knew those lines. He supposes the southeastern corner began at a cottonwood tree at Piedras Paradas and ran down to the grant called the Barela Grant. This is in the answer to Question 1154, and merely adopts the language of the question, but in answer to the next question, he says, he does not remember that a cottonwood tree on the river at Piedras Paradas was the extreme southeast corner of the Santa Teresa; and being then asked in Question 1156, if that line then ran north to the bend of Cobrena to another cottonwood tree, he says, he remembers that it was a cottonwood tree, but it was east of Cobrena and supposed to be the northern line. He does not know how far that cottonwood tree was from the Cobrena hill and he does not remember that he saw it. In Question 1160, counsel told him that he understood this to be the boundaries that he had mentioned and the corners the southeast and the northeast corners, which he answered in the affirmative. Counsel for complainant objected because the witness has said that he does not know what was the southeast and the northeast

corner, and that it is not fair to the witness to put questions in that double form and make him state that he knows something that he has just said that he does not know about. He finally is brought to say that the northwest corner was near Cobrena, on top of the hill, as near as he can remember it. He does not remember how far they went from the northwest corner to establish the southwest corner. They were looking for where the monuments had been according to that man but he did not know the boundaries upon the ground. In Question 1171, counsel tells the witness that the west boundary line from the northeast corner to the southwest corner was entirely over the brow of the hill all the way down, but the witness evidently understanding the question to be as to the location and direction of the west boundary which would be from the northwest corner to the southwest corner, says that there were places they crossed into the bottom below the Cobrena and went near to Yerba del Manso, and then over the edge to Santa Teresa and down to the neighborhood of Piedras Paradas, just above or below. He and Jesus Enriquez went into Juarez and instead of crossing on this side of Muleros, they took the old Paso del Norte road and went into El Paso, Mexico. In tracing the boundaries of the Santa Teresa Grant, he came pretty near the monument that is up on the hill, the Bordo de Arena hill. He knew Henry M. Atkinson, a surveyor, but he does not remember that he knew John W. March, surveyor general. He knew Atkinson at Santa Fe, but does not remember in what year. That employment lasted a short time, about a month. He was next employed in connection with the grant in the land court, but he does not remember when. It was simply going to the land court as a witness, where he testified as to the boundaries so far as he knew them. All that he knew was what somebody told him. He was not there when the grant was made and all he could tell was what Jesus Enriquez and other old people had told him. He was summoned

as a witness to Santa Fe and took three or four other witnesses, of whom he remembers Jesus Enriquez and Longino Borundo. He thinks there were three or four, but he does not remember their names, nor in what year was the case finally tried. Mr. Catron was the attorney for the plaintiff in that case, but he cannot tell when Mr. Catron became an owner in the grant. Mr. Austin and Mr. Catron employed him and they paid him for that trip not very much. He was doing it all for Mr. Catron. He and Mr. Catron were old friends and still are, and he adds as though that were a reason, that they were soldiers, that they were friends and comrades in the Confederate Army. He was employed by Mr. Catron and Mr. Austin and paid by them for the State of New Mexico, as he understood. He was employed by them but a very short time to get evidence so that New Mexico could bring the suit. After he was employed by them about two months he was turned over to the State of New Mexico, and he was to receive seven dollars a day as long as the case lasts, and if he keeps on with the case he will get seven dollars a day, but being asked if he expects to keep on with it, he says, that he does not know that he does, that he has business of his own. He is still to find witnesses and bring them to the court. He is then asked, in Question 1225, how he is going to know whether he is a good witness or not unless he talks with him, and he says he certainly inquires and that people have been residents for a long time and he generally asks them and goes and sees the men, and if they know anything he employs them as witnesses, but he does not mean employ them, but pay them for the time they spend. He is then asked, how many men he has interviewed who are old enough to know the river between White's Ranch and Alamitos, whom he has not brought here and does not intend to bring here, and after some discussion about it, he says, some two or three, two that he knows of. He is then asked in Question 1232, who

they are, and counsel for New Mexico objected to the question and tells the witness that he is not bound to answer and that complainant is not going to furnish the defense in this case with any material for their defense, and witness thereupon refuses to answer. He says he did not keep from bringing them here because they did not coincide with his views, but he believed that they believed what they did not know in reality and would not make witnesses for either side, and did not know what they were testifying to. He does not get a bonus from anybody, nor contingent pay of any kind, but he understands that under his employment he has a right to continue to investigate facts and if witnesses are found that he will bring them here. He says that he does not consider his pay as compensating him to be here three or four months. He can make more money outside. Question 1244 is, "But through friendship to Senator Catron you are willing to make the sacrifice?" To which he answers in the affirmative, adding, and his friendship to his county and the state in which he lives and the taxes, he wants to see this line defined where it should be and help put that in Dona Ana County and in New Mexico and in El Paso and to those who live here and around here who won't pay taxes in Texas or in New Mexico until this line is settled. He is then asked if it is through a philanthropic motive he is giving up all this valuable time, and he says, it is to settle this dispute in our country. He is in the real estate business and knows what a bother there is to it and they cannot get a title or a patent without some shade over it, and they cannot sell and transact land business in both El Paso County and Dona Ana County. He knows several people in El Paso County who are interested in lands up there, land that is in dispute. He says that he knows several Mexicans that are in El Paso County, a man named Chaves, a man named Ochoa, Ochoa is now dead, and Monica Enriquez de Garcia, and Pancho Enriquez, but he does not remember all the

different ones that he knows they hold land which is supposed to be in Texas or New Mexico, or both, and they decline to pay taxes to either one. The collectors from both sides try to collect from them and they won't pay either of them. He is not the adviser of some of them and has not advised them not to pay their taxes. Monica Enriquez is a relative of his, and being asked if he attends to her land business, he says, that whenever she has anything to do she generally comes to see him about it, and he advised her to pay the taxes, if they were in Texas to pay, and if it is in New Mexico to pay, or else notify the collector that she was ready to pay it whenever she was convinced whether it was in New Mexico or in Texas. He does not know whether the Santa Teresa Grant would be extended east, if the river line on this map should be the true river line. (Counsel holding up the map attached to the complaint in this case.) He does not know why those gentlemen are interested in it unless it did extend the line east of where it had been before. New Mexico has been paying him for the last eight months, but he has not been employed all the time. He has not been employed half the time. He would go whenever he could make it convenient, whenever he could leave his own business. And he is now drawing pay all the time and after giving his testimony he will still draw pay if he stays here. In Question 1264, he is asked if he were up at Las Cruces and still employed in the case, he would still draw pay, to which, he answers, that he would not when he is attending to his own business. In answer to the next question, he says, that if he is needed at any time he will be employed, but he is not under any contract. He says that the Ancon de Borrego was a bend in the river which extended from Santa Teresa down on the west side of the river to what was called the Muleros crossing at the Courchesne bridge. He first knew that bend of the river in '59. The river was not in that bend at that time. It was tornillo, screw bean, then. It was

a sort of a meadow, a vega. The name Ancon de Borrego, he supposes was applied to that place before that. It means a bend in the river, a turn, a pasturage sort of a place. He did not see the river there in '59. The river of '64 ran all over Sais' old place. It ran up above Santa Teresa there through the old El Paso road, over towards the foothills above Santa Teresa and that was known as the Amoles road also, and part of the time it cut through that old road and they had to travel in the hills over what was called the Cuarones Heights. That is where the road ran. The Cuarones brothers were killed before he came. He does not remember how long before they were killed. He remembers a place called the Ranch of Luis Barrio. It was some distance from Sais' place, a little west by north. Between '64 and '84 the river turned in there toward Cuarones Heights and ran up against the heights for a short time. He does not remember how long and that was the main channel for a while. Alamo Naranjo was where Sais lived. Naranjo was a big yellow cottonwood tree. It was a sort of a camping place and there was another name, Yerba del Manso, where they stopped a little while to feed their stock and rest them. That cottonwood was some distance from the river. The Bosque del Gato was a big woods and the river ran east of that bosque in '57 and from that to '62, when it made a change between '62 and '64, the river ran through and tore out that bosque. Cobrena is north of Bosque del Gato. The north end of Bosque del Gato commenced up there and comes down. The Loma de Arena was a big sand hill on Cobrena, higher some 50 or 60 feet than any surrounding country. There is low land between there and the hills proper. The river did go in between Loma de Arena and the hills proper. It ran in through there from Amoles. He cannot tell how long it was there west of Loma de Arena. That sand hill is not out in the valley, but it is a very high sand dune and it shifts near the hills. He says it formerly moved, but for many

years it has not moved from where it is. Mesquite would grow up around it and sand would blow up against it, and it has just remained there and become stationary. Being told in Question 1314, that from '62 to '84, it was not necessary for the people of Old Amoles to drink the ditch water because they had the river water, he says that at Old Amoles they did not have the necessity of drinking any water, because it was washed out and they moved over to what was called the town of Union. They did not leave any people at Old Amoles. The town of Amoles Viejo was entirely washed out. They built a place that was called Chosa and that was washed out. Jose Enriquez lived up above Amoles on the hill. Counsel then reminds him that yesterday he had told of some people who lived within one hundred yards of Old Amoles, and he answers, that he said they are there now, but nobody lived near where Old Amoles was for several years. He does not know how many, until the river filled in there so they could plant again. Being then asked, if he lived at Los Amoles at one time, he says, that he did, but not at Old Amoles. He lived at Amoles in '63, between the place called Chosa and Union, and prior to '64 he stayed two or three months with Simon Enriquez there hunting prior to the flood of '64. In '64 they got water from acequias between Union and Amoles Viejo. That acequia was taken out up near where Chamberino now stands and it was washed out by the river several times. The ditch of Amoles was just on the other side of Amoles and ran down between the old town and the new town that they called Chosa, and when that was washed out they dug another ditch west of that near where the lower end of Chamberino is and took it to the edge of the present town of Union. It was after '64 they dug that ditch. The river went up and took that acequia out a couple of times at least and they dug it again and made a channel where the acequia was, right up against Jose Enriquez' house, which was on a high place, as he

said yesterday, 15 or 20 feet high. They had the river there and a big estero or lake for a couple of years, in front of Jose Enriquez and then it filled in. The river made the lake after it withdrew, after '62 and '64. He is certain that the flood of '64 washed that country more than the one of '62, but the flood of '62 started the river over there. Being asked in Question 1338, if the flood of '62 or the one of '64, or the two combined made the river on the west side of the valley all the way from above Alamitos down to White's Ranch, he answers, that backwards and forwards it did, it made different changes there. He knew a man named Price Cooper at Ysleta for many years and was intimate with him. He does not know when he opened a farm up the valley, only by hearsay. He heard that he had a ranch up there, but not any farm. He heard that it was down somewhere where Chapo Reyes and Ben Dowell and other people had ranches up there, stock ranches. About 1860 and '61 and in '64, prior to 1864 they had ranches on the other side of the river, but he did not know the different ranches apart. He knew the ranch of Chapo Reyes well because he camped there. Price Cooper lived in Ysleta. The witness did not know whether he had a Texas title or not. Counsel then in Question 1351, tells the witness that he knew that Price Cooper had a ranch or farm on the east side of the river prior to '57, but the witness says, that he did not know that, that he never was at his ranch and knew him at Ysleta and did not know him up there at all. He then says he knows simply that Ben Dowell had a ranch up there and had a race mare and he used to keep that mare up there at his stable, but he, the witness, had never been at his ranch, nor this man Cooper's ranch, but he had heard it talked about, because the race mare was a celebrated mare. He had heard it said that Dowell kept the race mare at his ranch, but whether it was on the east side of the river or on the other side, he does not know. He does not know which

side of the river it was, and he had only heard them say Price Cooper had a ranch up there somewhere. He did not hear what side of the river it was on at any time, but he saw ranches on the other side, and he supposed it belonged to Price Cooper. The Reyes ranch he did know. It was on the east side of the river, near the river, just above White's Spur. It was north of White's Spur. From the present railroad to Reyes house, west, it was a very short distance, one hundred yards. He had a cattle ranch there. There was a little bend there in the valley and he pastured his stock. That house was not a hundred yards from the Santa Fe track at White's Spur. It was north of White's Spur some distance, and not more than one hundred yards from the present railroad. That bend of the river was a very short bend, just made a curve above, a very short curve above Chapo's ranch and turned below and went in to White's Spur, where White's Spur now is. The bend might have been a mile, that is from the house south, and it went a very short distance from the present railroad track, which he estimates three or four hundred yards. There was a road on the west side of the valley which ran up straight from Piedras Paradas, through Yerba del Manso, near Alamo Naranjo, to Amoles. Counsel then in Questions 1379 and 1380, tries to lead the witness into saying that that road was a road which lay between the road from Paso del Norte to Amoles on the west and the stage road which he had described on the east side of the valley; and the witness, says, that was the road on the west side of the valley running to Paso del Norte and the road on the east ran from White's Ranch up over the foothills and a couple of places were places as you see in dry times that you could cross. You could not cross any place in dry times as you could not cross in the mud, only when it was dry they could use it. When there was water in the slough there they had to go over the hills. The road west of the river of '64 from Amoles

to Juarez ran over the hills because the river had taken all the territory in the valley. Then in Question 1384, counsel asks him, if in the valley in dry times there was not another road that ran down from this end, that ran from White's Ranch or Piedras Paradas to Amoles. A number of questions and answers seem to indicate that the witness did not quite understand what counsel was trying to elicit, but it finally appears that there was a road there in '57, but he never traveled over that road until '59 and he had to cross a river to use that road at Muleros. It may be said here parenthetically, that there never was any evidence produced to show the existence of more than two roads going up the valley, one of which was on the west side and came from Paso del Norte through the Muleros mountains, descending to the valley near Piedras Paradas and continuing from there northward to Amoles and that it was possible by crossing the river at Muleros for people who were on the east side of the river to go over to that road in order to go either south to Paso del Norte, or north to Amoles; while the other road was the stage road described by the witness, which ran from White's Ranch up to Alamitos, principally on the foot hills to avoid the water of the river below, but in dry times that road would descend and cross what the Mexican witnesses called *rincones* at several places, thus making cut-offs. He knew the bend of Uranguena which started at La Bruja and came back at Sanguijuelas. He then says the river was there from the time that he knew it up to '84. The railroad runs through the hills and a big cut east of that bend. The bend is a little larger now than it was when he first saw it in '57. It was a very large bend, the biggest bend from Alamitos to White's Ranch. From the railroad to the west side of that bend, it was a good long distance, a half or three-quarters of a mile. Maybe more, maybe less. In '57 it was not as broad as it is now. After '84 it cut west. In '62 and '64 it broadened itself, it made

itself broader. It is still running there. From '57 up to '84, the river ran in that turn and ran there with the exception of when it crossed above in front of La Bruja and took a course on the other side down to the lower end of the Refugio Colony Grant, the farms of Amoles. It ran by the lower end of the Island of Garcia. The Island of Garcia was there before any flood he knows anything about. At the time of his first acquaintance in that country, there was an existing Island of Garcia and an existing channel at Los Amoles and they were well known things. These statements, however, are mere answers in the affirmative to questions which put the words in his mouth. He does not know when Uranguena was applied to that bend in the river. He thinks it is of recent origin, since 1860 sometime, but might be as late as '62 or '64, but not after '64, that they called that bend Uranguena, and it was so called because a man named Jose Maria Uranga owned the land in there and it was taken out, a portion of it, by the flood. Gualdarama Lime Kiln was not there when he first knew La Bruja and there was a lime kiln there, a small one. Being asked what they wanted with a lime kiln where there were no houses, he says, he does not know, he supposed it was for the Amoles people to burn lime on account of the rock. There was lime rock there. They had pole houses at Amoles and adobe houses. The church was made out of poles, but it was not a church, just a little chapel near the house of Jose Enriquez. That lime kiln was there in '57. In his opinion they took lime to Amoles. He does not know where they crossed the river. There was a ford just above there at Alamitos, or just below Alamitos station. In Question 1445, counsel asks "What houses in Los Amoles were of sufficient dignity for the use of lime?" And witness says that he will tell him the dignity of every Mexican town, every house has to have lime to make tortillas, to make their estimal, to make hominy. Counsel then in Question 1447, asks a question

of incredulity as to the use of lime for that purpose and the witness says, "I mean to say that wherever there is a Mexican house or two, they have to have lime to cook their hominy, to make their tortillas, and they make these tortillas all the time and they had no mills. And they have been grinding their wheat on metates". It may be said that estimal is a preparation from corn which has been boiled with lye or lime and that metates are a sort of stone mill upon which wheat and corn was ground by rubbing with another stone. He does not think that the lime kiln was for the purpose of bringing lime down to El Paso, but for the convenience of the town of Amoles. Not that he knows, but he is quite certain that is what it was for. In '57 there was one old lime kiln there in the height of the bank, but not in Gualdarama's time and there was no Gualdarama there when he first became acquainted with the place. He thinks that Gualdarama came over there in 1870 from San Antonio or from Marfa. He had a ranch or farm over next to Union and he moved over there to Union. The witness does not know when he was in Union, but thinks it was in the 80's. He knows Gualdarama had a place there and he visited him. In political times they used to go up and down the river and visit them all. He was then asked if he has had a great deal to do with politics in New Mexico, and he says that until very late years, he was pretty active. He tried to be. He does not know that he had influence with the Mexican people. They were friends of his. He generally voted with the Republican ticket, but he is now a Bull-Mooser or Independent. He is not a Republican, Democrat, Prohibitionist, or anything else. He votes for anybody he sees fit. He does not remember knowing Jose Maria Gonzales, and being told by counsel that he had mentioned his name this morning, he says that he mentioned Jose Maria Garcia and not Gonzales, but he mentioned Ramon Gonzales who lived at Mesilla. He knew Gonzales lived at Mesilla, and had a mule ranch in front

of Old Canutillo on the west side of the river. A portion of it was on the east side of the river. The river changed in '62 and '64 and after '64, the river cut back of the ranch and left it on the east side. He does not know that all the ranch was on the east side after that time. The witness does not know that Gonzales had a farm and cultivated a place in connection with that ranch, as he knew that he had a ranch there by hearsay. Prior to '64, he knew of no cultivated land on the east side of the river. He did not know the ranch where the race mare was. The race track was here at El Paso, Texas, in Franklin, in front of the Old Overland Mail Building which faced north. Coming from Franklin to Paso del Norte, this building was on the south side of the road and the north side of the road was where the race track was. It was a straight track. He was not interested in racing and he has not gone to the race track at Juarez. It may be said here that there is a race track at Juarez which is said to be one of the finest on the continent, and the racing there prior to the present revolutionary troubles in Mexico was of a celebrated character. He says that he never cared anything about racing and bull fighting. He is then told by counsel that he said something about Escobar and Garcia helping him trace the lines on the west side of the river, a line of the grant, and he says, that they did not help him trace the line. He said he knew them. He says that they did not help him trace the lines, but he knew those parties. He says he mentioned that they were the owners, that Escobar was the owner of the Santa Teresa Grant and that Garcia was the owner of the Isla de Garcia. He went over with Jesus Enriquez, as he has told counsel before, on what was supposed to be the west line and what was supposed to be the north line, but he never crossed over the southern side. Jesus Enriquez told him that he had gone with some surveyor, but he is not positive of that. He does not remember what surveyor, but supposes they were

American surveyors. He is then asked, if he knows Venturo Lopez and he says, not that he remembers, but his answer to the next question, shows that he answered it as he did because counsel got the name wrong. He says that he did know Ventura Lopez who lived at the Puente de los Indios, which was the Bridge of the Indians, and when he knew him, he was a private citizen and owned the place where he lived. He never knew him as judge of the court. Jesus Enriquez did not tell him that he went up there about 1853 with Lopez to locate the Santa Teresa Grant. The Escobar whom he knew was Jesus Escobar. He never went up there with the witness and the witness did not know his father. The witness is speaking about the old man who was a customs collector and the owner of that grant. He knew a place called Fronteras and being asked where it was, he says, that right after you came out of the canon that is the old Fronteras District. El Paso del Norte was Distrito del Bravo. He means the northern end of the canon as he knew everything from the canon towards New Mexico. At the northern end of the canon was called Fronteras, from White's Ranch to just outside of the canon. He did not know an observatory station called Fronteras and never heard of it. He had not heard of where they started a survey of the river near White's Ranch under the Treaty of Guadalupe Hidalgo, only by hearsay. He says he heard they started a survey up there somewhere, but he does not know where they had their first station. He heard of where they had the corner of Old Mexico, but does not know where it was exactly. He has heard of a good many surveys, but as to what they were, he does not know. He has heard about surveys from El Paso up. Even from Emory's time to some time later, there were several surveys, but he does not know what ones they were. He did not at that time, hear of the survey which started at the monument near the smelter and ran due west. He does not remember that he heard of the survey grow-

ing out of the Gadsden Purchase. He might have heard of it, but does not remember. He knows there is a monument at this time on the opposite side of the river near the smelter. That monument was there when he came and it has been there ever since. He was acquainted with Ben Dowell in El Paso. He was the manager of Pabst's Saloon on the street going to Paso del Norte and from hearsay he knows that Dowell had property up the river. He was then asked, if it was a fact that he knew nothing more about these ranches than he has told and he says, that he had no occasion to go to these ranches. The only ones he had occasion to go to was the Reyes Ranch, the Enriquez ranch, the different Enriquez' ranches, and was familiar with the whole valley, but he knew nothing of the Magoffin farm, nor the Price Cooper farm, nor the Ben Dowell farm, and he never was at the ranch of Ramon Gonzales, which was near Old Canutillo, but he never was on that ranch. From what he was told, it was on the west side of the river. If there was any object in asking him about these different farms, it never was made to appear in the course of the taking of the testimony. In proving up the grant the attorney was Catron, if he remembers right, and not anybody else with him that he remembers of. He never knew that a man named Pendell owned the grant, if he did own it. He never knew Merritt R. Pendell and he does not know that he claimed to be the owner of the Santa Teresa. He does not remember the man's name, it was a man who lived in San Antonio, and he, the witness, made some affidavit in the land court he supposes. He does not remember the time; on September 25, 1907, he thinks he was in the United States land office. He supposes that his affidavit would have weight the same as any other witness. He did not attend the last session of the New Mexico Legislature and did not, that he remembers, furnish any affidavit to the Legislature about the location of the river. He did not attend the sessions of the Legislature which made an

appropriation for carrying on this suit. The surveyors with whom he worked in this case were Mr. Post, Mr. Steen, and Mr. Turley. He does not know who were the surveyors before the state took hold of it. He did not work with Mr. Post when he was surveying. He does not know that Post surveyed anything, but he saw him working there at White's Ranch one day and on a few other occasions running lines, but he, the witness, was not with him. Steen was with him, but the witness does not remember who else. He knows that when the parties pointed out the places and showed them, Mr. Post was with them and drove stakes down at different distances and Post went along with him and the witnesses showed Post the river. Post accompanied a great many and the witness does not remember the names of all of them. Steen went on some occasions and Post on the majority of the occasions, and different witnesses went with them. Juan de Dios Sais and Jose Enriquez went with Post. He cannot tell the names of all the witnesses on each time, but there were several times Post was with them, and then Steen was with them and he thinks there were one or two occasions when Post was not. Post is the surveyor of Dona Ana County and Steen is working as surveyor for the State of New Mexico in this case with Mr. Post. The witness does not remember when Mr. Steen began, but he was with several of those witnesses. He did not start with the first witnesses, but Mr. Post did. Mr. Post was with the witnesses early in this year and he was there last year, a portion of last year. Last year Mr. Post went with Juan de Dios Sais, Florencio Lucero, Jose Enriquez, Vicente Garcia, Jose Garcia, and those are all he remembers now. He was along on each trip. They did no surveying at that time, but simply put down stakes and left the stakes there. Being asked in Question 1009, where the witnesses disagreed as to the location of the old river, what did they do with the stakes? The witness says, he does not think the witnesses disagreed.

A very small portion might, but not—he was here interrupted by counsel who asked if he means to say that sixty witnesses taken and found by him all agreed on the location of the river, and he answers, they did not. They made different changes and showed Mr. Post the changes and Mr. Post made a memorandum as to anywhere that they did not agree on certain points. Counsel then asked, if they disagreed, which point would Post take, the east or west point? And the witness says, he took both points. The witness states that he said that Post staked and made a memorandum where there was anything, and if there was any difference it was mighty slight, which he knows because he heard them talking. When the witnesses disagreed, he did not say anything. He let them state their idea and he stated his. Counsel then asked, if they went farther east than he, would he take their statement, and he says, he does not know if they made anything of that kind, and he does not know if there were ever any disagreement about it, any argument at all, and he would not raise any argument if it did not suit him. Counsel then asked, "Suppose they went a half mile east of where you did", and the witness says, that he let it go. Counsel then asks, "Suppose he went a half mile farther west of where you did would you bring him here?", to which the witness answers in the affirmative and states that the men can agree on one point and not agree with him on another point and says there might be a half dozen points all right and not agree on the others. In Question 1622, counsel puts a hypothetical case as to the witness agreeing with Van Patten as to the location of the river at Alamitos and running the main channel to the west of the island below Alamitos out below Los Amoles, and asks if he would bring that witness here simply because he had agreed as to the old river at Alamitos, and the witness says that he would not. The next question is one which might be characterized as an absurdity because it talks about a witness having agreed with Emory, Bartlett, Sale

zar, and the joint commission representing the United States and Mexico under the Treaty of Guadalupe Hidalgo, and this witness says, he would not know whether he agreed with Salazar or not and that he, Van Patten, would not be supposed to know what his ideas about Salazar were. He is then told by counsel, that he had to put the river on the east side and Salazar might have put it somewhere else, to which he answers that he does not know whether he did or not, that he knows where he saw it and that is all he knows about it. He did not see it in '50 or in '51 or '52, nor '53, and did not see it until '57. He is then asked, that if he imagines where he saw the river in '57 determines the facts in this case, and he says, he does not. In answer to the next question, he says, that he knows where the river ran in '57 and not prior to that, but he knows where he supposed it ran prior both from the looks of the place and according to the lines of the place prior to the time he saw it, but he does not know how many years it had been running in the same channel. He thinks the channel of '57 was identically the same channel which existed a few years before. He knows Tarin whom he took up and down the river once in a wagon. He took him to Piedras Paradas, to Corral de Tapia, to Alto de los Cuarones. He did not take him to Cobrena but passed in front of it, near it, and they passed where the Bosque del Gato was formerly. He did not take him to Amoles. The witness crossed the river this side of Amoles. He does not remember how many days he had Tarin looking at the old river-bed, but two or three. He does not remember how long they were on those trips, but knows they went around. They took a cook and went in a wagon and he thinks he took Tarin in a wagon. He knows he brought him from Ysleta here in an automobile and he thinks they went on the west side up and crossed above Old Canutillo, and went up to Alamitos and from there they came down on the east side of the river to White's Ranch and Piedra de Amolar.

He knows that Colmenero went twice, maybe more times, but he is sure he went twice. He does not remember his going on the other side, whether he went on both trips or not. Colmenero did go the circuit with him on both sides of the valley. Colmenero was with them two trips, but he does not remember whether he took him on both sides of the river twice. Mr. Post quit only a couple of times that he could not go, a couple or three times, when he was busy at his office and could not go, and when he did not go, Mr. Steen went, and they both went together on several occasions. He does not know when they surveyed the river, but he knows they were surveying for some time and have been for several months. He does not think they are at it now and thinks they quit some ten or twelve days ago, 15 or 20 days ago, when the case commenced. They were doing something. He does not know what they were doing. He furnishes Post and Steen witnesses and they hear the witnesses and then they do the surveying, or whatever it is. He cannot tell whether any witnesses have been used except those who were first interviewed by him. They had other witnesses, but he does not know who they were. They may have had witnesses he did not know anything about. He does not think they have used a witness whom he did not procure.

On re-direct examination, he says, that the first time he came down the river with Mr. Post and the witnesses he thinks was in August and September of 1912 and at that time there were six or seven men came with him and Post. Counsel then told him, that he had given Mr. Turney the names of five who were with him on those first visits and he says that he does not recall the names of others, but he is then asked, if he heard their names if he would recall them, and counsel asks him if several persons named were among the witnesses, and he answers in the affirmative with one exception; the names being Anacasio Duran, Catarino Martinez, Faustino Acuna, and

Victoriano Abalos, but he does not remember that Felis Garcia was one. On that first trip he visited the place where the house of Salado had been and found remains of the house. He says they found a foundation of rock and the door sill, the bottom of the frame of the door, the sill. He visited the same place on many subsequent occasions, but the ruins were not in the same condition. The rocks had been taken away and the door sill was gone. The acequia which he saw at or near Alamitos was some time after he was running on the stage. He supposes six or eight months, but it was before he went into the army which was in 1861. The witness is here shown complainant's Exhibit No. 1, and is asked what place that is, and he says, it is below Alamitos and he says that the picture was taken this summer, not very long ago, and that the water which appears in the picture is from a freshet that came down from above Anthony from rains. Before that freshet there was no water in the place which is shown in the picture, but there was just a mud-hole there. That depression in which the water appears is the depression of the old river as he knew it in 1857. He says that he can see the cottonwood tree and there is a willow this side of where the station was. The cottonwood tree is right near the station, which is the tree that has the figure one over it. That tree is fifty or sixty feet from the place where the stage station was. The house of Jose Enriquez was up on a hill and is a little above where the old town of Amoles was, that was destroyed, and is nearer to the old town than to La Union. The town of La Union and Jose Enriquez' house are both on the hill. Pinos Altos is in Grant County, 100 or 125 miles from the Rio Grande. The ranch of Judge Parker is on the west side of the present river. The ranch of Carabajal was above Alamitos and it was a cattle ranch with no farming land. He was there before they were digging the acequia. Of the men engaged in digging that acequia he remembers one very

well, Claro Cadena, or Claro Lucero they called him. He was called by both names. He does not remember any of the others. He did not have, while he was register of the Land Office, a map showing Texas surveys and had only the United States Land Office map and township plats. He says that the Ancon de Borrego was not a bend in the river, but was a bend in the hills. It was a plain, a tornillo there and a meadow. There is a present existing place where the ranch of Chapo Reyes was on the east side of the river. It is his daughter's house. His daughter has the land there. Her name is Angelita and she married a boy by the name of Hale, Johnnie Hale. When he first knew Ancon de Borrego there was no river there at that time. It is not correct that the entry of John Graham in the Land Office at Las Cruces was the only one ever made in any part of the land in dispute. It was the first patent that he knew. Other entries, other applications, were made while he was register of the Land Office. He does not remember if any similar entries had been made before he was register. He is sure that he took Colmenero once on one side and on another occasion on both sides of the river. He remembers the time when he took him up the river and the Attorney General of New Mexico was with him and that was on the east side. Counsel then told him that he testified yesterday, that the stage road between White's Ranch and Alamitos was at places a mile and a half and two miles from the edge of the valley, and asked him if that is correct, and he says it is not, and that he does not think he testified that and if he actually said that he did not understand the question. The farthest place the stage road was from the river between White's Ranch and Alamitos would have been in the neighborhood of half a mile, but he thinks it was farthest at what was called the salitre. At the Uranguena bend over to the river at the most distant place of that bend it was a little over half a mile. The road went right near the

present town of Canutillo and went around the edge on the top of the foot hills and then they made another bend and came out at Sanguijuelas and from there they cut across and came pretty near straight to La Bruja and then they went around La Bruja there. He is then asked if it is correct that from the peach tree at Duraznito it might be four or five hundred yards to the old river as he first knew it, and he says, that the river was right near the peach tree and he does not know how he happened to say that, but he must have been mixed up in some way or other. The old river was a very short distance from the place where the peach tree was. He has not at any time made a careful examination of the map attached to the complaint in this case so that he could say whether it is accurate or correct or not. The map which he saw at Mr. Post's office was a big map, six or eight feet long, or longer than that maybe. He did not make any careful examination of that map. He was called in there to give names correctly, the Spanish names. He does not remember when that was. When Mr. Post was driving the stakes he put them a very short distance apart, but he does not know what use he made of those stakes afterwards. When he first became acquainted with the Island of Jose Maria Garcia, it was not entirely surrounded by water all the year around. There were deep holes and water in places near that island, and big pools where they fished. He did go all around that island. At the eastern or northeastern end of the island it was a pretty long distance from the old river which he first knew. The island was a sort of an egg shape, and north and south was its longest way.

On re-cross examination, he was asked when he discovered that he had made a mistake about these distances and he says he discovered that when he was told that he had testified yesterday that he stated that the river ran a great distance from Duraznito. He was not told

that he had made a blunder, but was asked if that was correct and was told that he had stated it was a long distance off. He was not told that he had butchered up all the other witnesses, nor that he was in conflict with all the other witnesses, nor that he had done the case great harm, nor was he told that he had played thunder. After this series of questions, counsel finally asks him what was he told, and he says, he was asked if it was correct as he stated, and he said that he did not say so, and that if he did say so, he had made a mistake. On pages 744 to 747, the record is encumbered with further cross examination as to what he had previously testified and why he had made mistakes, and as to whether anybody had taken him to task about mistakes, but nothing is elicited of any importance. He says that Scott was the station keeper at the stage station and went there as a stage employe and he used to take care of the stage stock there and that is all he ever did. The witness did not know White. White was gone when he came. He knows that White had had sheep there and cattle from hearsay. He never heard of the Magoffin ditch. Martinez has not yet testified in this case. The door sill at the old house at Old Canutillo he did not see recently, but saw it within the last eight months. The house was not made of mud, but there was a room made of adobe and a rock foundation under it. It had a mud floor and he was in it. It was a room made of adobe with a rock foundation where Salado lived and he went to that door many times to get a gourd to fill up his barrels. It was an old house. The adobe house was not very old and even then they were building a little addition to it. Salado was building it. There were several houses when the witness got there, three or four. They did not have any church there. He does not know who else besides Doroteo Salado lived there. He often saw Florencio Lucero there, and he is living and is one of his witnesses. He has not testified. That adobe house was not a very old house

when he first saw it and there was an addition, a little kitchen built while he was going backward and forward for a little over a year and made a trip every ten days or two weeks. He was there about every ten days. He went there because there was no good water at Mesilla and he used to take water to his uncle, Giles Hawley. This door sill was to the adobe house and not to the pole house. They did not build pole houses on rock foundations. He was told yesterday about his testimony concerning Borrego bend and being asked what was said about it, he answered that they wanted to know if it was correct as he stated about it being a bend in the river and he said no, that he never said so and he did not. It was a tornillo bosque and a meadow. He says he is not giving this testimony to suit anybody but is trying to tell the truth as near as he can about the places as they were at that time. Being asked if any one has jumped him about it, he says, no, and nobody makes him change because they jump him. He is then asked who secured his appointment as registrar of the Land Office, and he says, several parties did, but Senator Catron did not. He did not ask him. He was asked to take the place and did not apply for it. He says that Judge Parker and several others secured his appointment. He says that he is not conceited enough to say that the office sought the man, but he was asked if he would take the place. He says generally speaking people take offices for what there is in it and on very few occasions has he ever seen offices seek the man. He is asked if he had stated that he never heard that the Rio Grande was the east boundary of the Santa Teresa Grant, and he says, that he does not remember that he did. That he does not remember that he heard it stated and he does not remember that it was. He does not know whether it was or not. He never remembers of having heard it said that it was and in making his investigation for the location of the Santa Teresa Grant he did not take the river into consideration,

and being asked what places he was looking for the east boundary of the grant, he says he was not looking for the east boundary. Being asked where he was looking for any boundary when he went there 11 or 12 years ago, he says, that he went with Jesus Enriquez just below the Cobrena hill and went from west to east on the north line over where New Canutillo now is to the east. He was showing the witness where the Refugio Grant line was and he said the southern line of the Refugio Grant and the Santa Teresa lines coincided. He was not a very old man and was the son of Simon Enriquez that lived at La Union, and he was an older brother of Jose Enriquez. He was then asked, if he did not know that when he first went to look for that grant, it ran from the point named at the cottonwood at Piedras Paradas, having the Rio Grande for its east side and he says that at the time they went there the Rio Grande was in there. Counsel then tells him that he was not looking for the Rio Grande of that date, and he says, that he was not looking for the Rio Grande of any date at that time. He was looking for this man to go over the grant where the grant was and he does not remember that he told him where the river was in '53. He did not tell him that the river in '53 was running at Piedras Paradas and he does not remember that he told him that from that point it followed the river which was its east boundary to the cottonwood at Cobrena, and he does not remember any of those witnesses telling him that. There are several pages from 752 to 754 of cross examination about the boundaries of the Santa Teresa grant which does not seem to present anything of any importance to the present case. He did not say yesterday there was a contest pending in his office in regard to John Graham, but there was a contest pending between Kezer and the brick kiln men. As to John Graham, he states that he never said there was any dispute as to Graham's filing, but he knew that Graham filed and he received his patent and turned it over to

him. He filed before the witness was in the Land Office. If there was any dispute as to Graham's land conflicting with land claimed by Texas, he did not know it. He knows that there was a claim about one of the Berg girls. They had applications there which were made during the time he was in the office and there was a dispute about this. Somebody from Texas tried to contest their rights. The names of the Berg girls, one was Aileen and he does not remember the other. He was never at her place in his life, but he knows it is in the Anapra district. The land is in New Mexico in the district called Anapra. He thinks the land extends into the river bottom. She took up a quarter section and she told him it ran into the bottom. Mexican men such as the witnesses he has had here are paid in his country $1.25 and $1.50 a day and their board, and he paid these men $2.00 a day when he took them from their work or business. They had to put another man in their place and he pays them $2.00 a day. Several of them put somebody in their places and he knows two of them paid and they had their children to look out. He paid the witnesses and furnished them means of conveyance and fed them in addition and he has employed a stenographer and a cook and wagons and the men to drive the wagon. He did not always have a stenographer when he went, but he had somebody that could do the writing. He had his nieces and he does not remember all the persons he had, but he remembers having his nieces on several occasions, one at one time and another at another. One is named Edna and the other Hazel. He did not employ Mr. Chaves, and the Attorney General for New Mexico at this point told Mr. Turney that all these people were employed by him or under his direction and that those that Mr. Van Patten employed, he employed for him and on his behalf, representing the State of New Mexico. Mr. Turney thereupon undertook to cross-examine the Attorney General as to when he authorized the employment and was told that the Attorney General could

not give the date and was not on the witness stand, but was trying to give some information that Mr. Turney seemed to think was of some importance and Mr. Turney seemed to be quite insistent that the Attorney General should answer further questions. The witness then stated, upon being asked, that he was employed by Mr. Clancy in August or September of last year, and he does not remember when the appropriation was made by the legislature. He did not see Mr. Clancy when he employed him, but he was employed through Mr. Austin. What he knows about Mr. Clancy employing him was through hearsay, he had not written to him about it, but he wrote to him many times afterwards. He has lived among the Mexican people for a great many years and has worked with them in elections. He did not marry a Mexican woman. He reads, speaks, and writes the Spanish language well. He thinks he was employed by Mr. Catron and Mr. Austin because of his knowledge of Spanish and of the people. He does not know about the friendship of himself and the old citizens having anything to do with it, but his knowledge of the Mexicans had. He says he was employed, he does not remember the length of time, with the Santa Teresa Grant, and then he has been employed through last year in August and September and then they stopped for several months and then he was ordered to start on again and has been at it since. He thinks he has interviewed fully one hundred people whom he supposes to be of age sufficient to have a knowledge about these things. He has not taken as many as sixty up and down both sides of the river, but he has taken a majority up and down the river, both sides. As he said yesterday, he has taken, with a few exceptions, the majority of them up. His main purpose in this matter is not to increase the boundaries of the Santa Teresa Grant. It is not the only tract of land which would be benefited materially by locating the river where he has placed it. The Refugio Colony Grant would be benefited.

That is owned by individuals who live where formerly was the Refugio Grant and now is in Texas. They are not helping to pay him and he is in no way in the world interested with them. As he understands it, the Refugio people and the Santa Teresa people would be the beneficiaries if New Mexico wins her contention.

On re-direct examination, he says, that Jesus Enriquez showed him the boundaries of the Santa Teresa from the east running west to the Cobrena and from the Cobrena down to Piedras Paradas which are the north and west boundaries. At this point on pages 760 and 761, there is some discussion between the witness and counsel about the witness being ill during a part of his examination, which does not throw any light upon the facts of this case unless it tends to account for some mistakes which the witness made and results in a slightly unpleasant colloquy between opposite counsel about keeping the rule in force against this witness when plaintiff's counsel declares that he would not call him as a witness again.

We now come to the testimony of

NESTOR ALBIDRES

which begins on page 762 of the record.

This witness says he has no fixed residence, but at present he lives here. He was born in Socorro, Texas, and he is entirely blind and has been blind about eight years. He lived in Socorro until he was 20 or 21 years old and then he went to Mesilla. Mesilla was settled in 1850 and he went there afterwards, in 1854, the same year that the flag was raised. He was born in 1831. He knew the town called Amoles and first knew it in 1849 when he remained there while they were cutting wood to take it by the river. At that time he became acquainted with Alamitos and there was only the river between Alamitos and the place where he was cutting wood on the west

side of the river. They took the wood on the river to the dam of El Paso. The place where they brought the wood to the bank of the river was separated by the river from Alamitos. They took the wood down the river in rafts and he then became acquainted with the river from Alamitos down to the dam, and he learned the names of different places by the river. While they were working there he heard the noise of soldiers who were camped at Alamitos and there were a good many soldiers. During the whole time that they were there cutting wood the camp was there. The soldiers came from the north. He does not know where they went from that place as when he left the camp remained there and after he came back he did not see the soldiers again. The camp of the soldiers was at the edge of the bosque and he could see the hills at the edge of the bosque which was near the hills. From Alamitos the river came straight until it formed a rather small bend. The river would strike the bosque on the other side and turn back towards the east toward La Bruja. La Bruja was a height and it may have been a watering or stopping place, he does not know. The river ran near the height of La Bruja. At Sanguijuelas there was a bosque and a stopping place, he supposes it was. It was a round valley of land there. There was no water. They passed right by and the river ran by. They started with a large lumber raft and came following the river until they were in front of the Sanguijuelas and then the river ran some distance this way and ran toward the west and then it turned and left this land of the Sanguijuelas and from there the river turned some distance from La Bruja again to the east. The river was below Sanguijuelas and the river would strike the hills. There they traveled a long distance and then the river made another bend toward the place called Corral de Trosas. The bend on the other side was large. From Corral de Trosas on the other side there was a very large bosque clear to Amoles. There was bosque all the way from Amoles to Corral de

Trosas. He did not know Doroteo Salado. He heard his name and he lived at Canutillo. When they were rafting the wood, the river ran close to the bank at Canutillo and they passed by. He saw some jacales at that place. His raft was traveling very fast but he saw some jacales. He did not become better acquainted with that place later on. He knew a place called Duraznito. It was a height and at Duraznito was a large tornillal and a grove of cottonwood trees. The cottonwood trees were on the east side. The hills were right close to Duraznito. The river was quite a distance from Duraznito. From the bend at Canutillo, the river ran close to the east and from there it went cutting through that grove and the grove of trees on the other side divided Piedras Paradas and Duraznito. The river was running between the two bosques. At Duraznito was a bosque and toward the west was another bosque and the river ran between. He became acquainted with White's Ranch and when he rafted the wood down the river he passed by that place and the river was close to the bank, and close to the bank was the height of White. The river would strike the height of Santa Teresa and the height of White also and from there the river would strike straight to the bank of White. From Duraznito down, the river was close to the hills on the east side. The Piedra de Amolar was below White's in front of an arroyo. The Piedra de Amolar was quite far from the river. They followed the river through the canon. After he went to Mesilla he started to work in the farms and did not go down again. He traveled three times in those days in the river before he went up there to live permanently, before he moved there. When he was rafting wood he saw the place where there was a beaver dam which did not extend all the way across the channel of the river. There was an obstruction up there by the beavers at the edge of the river and there was a little branch to one side and the obstruction was very large. There were two branches of the river. The larger

one was on the east side. The two branches came together below, but he does not know where. He did not know the Bosque de Artesa. Between Duraznito and White's Ranch there was a large tornillal or grove of tornillo trees, and from Duraznito to the north there was a large tornillal on the east side of the river. On the west side there was bosque. After he went to Mesilla to live, he came back once, about twenty years after, so that he does not know about the roads between here and Mesilla and Las Cruces in those early years. When he went up to cut wood he went with carts on the other side of the river by the dam. At that time he did not go up by the road on the east side of the river, but he did afterwards, about 1854. It was before he went to Mesilla to live. He went to Mesilla in 1861 and was then a grown man and a voter already. He had been a voter at Socorro from 1850 to 1861 when he went away. When he went up the road on the east side of the river, the road ran in front of White's house and along the hills by the same heights where the house of White is. It went down at Duraznito because it came down along an arroyo and there they claimbed the height to Duraznito and the river was quite far from the height. At Canutillo the road was close to the river. He traveled there at night and did not notice that the road came near the river at any other place. When he went up the road on the west side they came out of the hills at Piedras Paradas and camped there for dinner. There was bosque from Piedras Paradas toward the east. The road was on the hill above Piedras Paradas. The road, part was good and part was bad. In going up the country it was on the height and he only knew the road on the height as far as Amoles and he never saw any other road than the one on the height.

After a recess there was a resumption of disagreeable discussion which appears on pages 770 to 773 of the record as to the exclusion of Colonel Van Patten from the court

room, in which counsel for the defendant cast such unkind aspersions upon the witness as to call a very strong statement from counsel for complainant in behalf of Colonel Van Patten. There was also a statement by the commissioner appointed on behalf of complainant as to Colonel Van Patten, whereupon counsel for Texas gives Mr. Baker warning that he will be examined and cross-examined in this matter later, which seems to be in the nature of a threat, but nothing ever came of this as there was no attempt to examine or cross-examine Mr. Baker. It is stated on page 773 that Colonel Van Patten was not present, and so far as the record shows, it does not appear that he ever was again present, and it may be assumed that he was not.

The examination of Nestor Albidres was then resumed on page 774, and he said that they rafted wood down the river in the month of August because that was the time that they could travel by water and there was sufficient water to float their rafts at that time. He rafted wood down the river three times in three different years and it took four days, sometimes three days to come from the vicinity of Alamitos down to the dam near Paso del Norte. They used to stop to get their dinner and some times they camped at night. They stopped at different places to camp and sometimes some of them would go to help others who had trouble with their rafts on the river. They never stopped in one place more than one night at a time and the next day after breakfast started again. The first time he went down in '49, there were about twenty-five men and on the other occasions at least twenty, because the Indians were bad at that time. Between Alamitos and White's Ranch the river was on the east side of the valley. He saw a lime kiln above the place called La Bruja from the river, and when he saw it he was near it. He does not remember seeing any lime kilns in the vicinity of White's Ranch. The ford called the Vado de Muleros was opposite White's house. When he

first knew the place called Alamitos there was no house there. The place called Alamitos was a camp of soldiers and when they first floated the rafts in front of Alamitos they came there to see the excitement, to see them start the rafts, the soldiers did. The next time he floated any rafts there, there were no soldiers. The first trip he made was in 1849 and the next one in 1854. He went up to Mesilla to live in '60, in '61. The third time he rafted was in 1860. They brought the wood each time from the same place, near Alamitos at the Garcia Ranch. They were on the bank of the river, but not near Alamitos. It was on the west side of the river where they were and Alamitos was to the east. At that time there were thirty men and they were scattered on the ranch of Mr. Garcia. The soldiers were camped at Los Alamitos and he was on the other side of the river from the soldiers on the west. The men were scattered, some above and some below hunting for the best logs. They made the rafts in the high place that was dry and then pushed them to the bank of the river into the water and that was directly opposite Alamitos. A little below from the place where they made the rafts, he could see the soldiers camped. The second time that he made rafts and brought the wood down the river they were made and put in the river at the same place. At the second or third time he did not see any houses at Alamitos. He did not go over to that side of the river. In the month of September, 1854, when he made the second trip, he traveled the road on the east side of the river and that was the only time. When he went the third time to make the rafts, he went from here on the other side and it was on that side they went the three times. He went to Mesilla to live the following year after the third voyage with the rafts. He did not go to Alamitos but heard there was a station there in 1864. He never saw it. When he went to Mesilla to live, Mesilla was on the west side of the river and now it is on the east side of the river. The river changed

from the east of Mesilla to the west of Mesilla in 1864. He was living there and had been living there about three years. The soldiers from Texas came up the country in 1862 and in that year there was a large flood and the people made some bordos to stop the flood at Mesilla on the upper side and there were at that time some of those soldiers there, some at Las Cruces and some at Mesilla, and they helped the people in the making of these bordos which stopped the river for that time. In 1864 some portions of these bordos were still there. The flood in '64 was the flood that ran to the west of Mesilla. The flood of 1862 was larger.

On cross-examination, the witness testified that when he went from Socorro the first time to raft wood, he crossed the river at Senecu' opposite Ysleta. It may be said parenthetically to make this intelligible, that Ysleta is 12 or 15 miles below the present city of El Paso and on the same side of the Rio Grande. He then came up the river on the south side to Paso del Norte and stayed there with his grand-parents who lived there, and from there he traveled on the other side by the mountains where the dam is. They left Juarez quite late and stopped at Piedras Paradas where they had their meal in the evening, but did not spend the night there. There was an estero there, a big one and they watered their oxen there and made their dinner there. This was in August, 1849. There were four carts and these wagons were taking provisions and ropes for the rafts. He cannot say what the distance was from Amoles to the place where they made up the rafts, but it was far. Being asked in Question 231, how near to Los Amoles did he cut the nearest wood, he says that he cannot give the distance, but it was right there adjacent. They got the wood to the water's edge in the carts. Sometimes they would camp in the bosque and sometimes they would come to the houses on account of the company. The wood was cut on

what was known in those times as the land of Don Jose Maria Garcia and all along the whole course of the river was a stretch of rafts. There were twenty-five of these. Wherever the different companies made their wood they would make it close to the river where they would put it in. The rafts were very large. They would make one just like his hands (crossing hands gridiron fashion) and then to the tail of this one they would tie another until they were all tied. They would come down together. He cannot say whether the people at Amoles got water from the river. There might have been acequias, they might have had wells, he does not know. The river at that first trip was far from Amoles. The river came running from the north and formed a pocket or a bend coming toward the east. He cannot say how close that pocket was to Amoles because it was all bosque, but it was a long stretch. The river was coming this way as he points (pointing eastward), making a pocket toward the east and leaving the bosque on the west and when the river was coming from the west this way, it would throw the water to the east. He does not remember that he knew Jose Maria Garcia when cutting wood and making the rafts as Garcia was not there in those times. The witness knew him afterwards in Juarez. He never knew him in the upper part of the valley nor was he there either. There was never but a vacant ranch there at that time. When they camped on the first trip at Piedras Paradas they went from there to the ranch of Garcia so as not to lose another day at their work. The ranch house was near Amoles, in the same place. They went from Paso del Norte to Garcia's house in a day and a night. He believes that Garcia had a well. There was a well there that they drank water from when they were at the house. He knows the Corral de Trosas. There was nothing there, just an arroyo and an old house and corral, and he believes there must have been a ranch there at some time prior to '49. South of that place towards Paso del Norte

nobody lived in the early days. In those days the entire place was alone. He did not know a place called Yerba del Manso. He traveled there at night each time that he went to cut wood. They always made the trip from Piedras Paradas to the ranch of Garcia during the night. They would stay at Piedras Paradas until the sun was quite low and they traveled at night on account of the danger from Indians The bosque from which they took wood was very large. He did not know a place called Cobrena Bend. If he passed it, it was in the night time. He did not know the Bosque del Gato, nor the Loma de Arena. In the night time he could not tell anything about where the river was. He did not know a place called the Alamo Naranjo, nor the Alto de los Cuarones. Being asked how wide was the valley at Amoles, he says, it was a wide stretch. He cannot say how large, but it was a big stretch. The bend was a big one over at Amoles and the bosque was a big one. On the side of the river they were on there was more than sufficient wood, but being asked if there was plenty of wood on the other side, in Question 280, he says he did not cross to the other side and did not go to see at any time. It took three days to bring a raft from Alamitos to the dam, because after the rafts got wet they traveled very slowly and they had a great deal of difficulty in floating them down on account of their breaking loose and they had to help those who had broken loose and tie them together. Between '49 and '54, he did not hear anything of persons surveying the river up there, nor of persons going by Socorro surveying the river, nor of a surveying party being camped in Paso del Norte. After 1854 when he came back to Paso del Norte, he went to work at Fort Quitman and stayed there nine months consequently he did not hear of anything here nor at Socorro nor anywhere else. Between '49 and '54 he lived at Socorro. He did not hear of General Conde and a Mr. Salazar being camped in Paso del Norte. He does not know anything of American

soldiers being brought from the north and taken to Paso del Norte. He is then asked if he heard that some Texans had gone to try to take Santa Fe and had been arrested by Mexican soldiers and taken to Paso del Norte. This question could only relate to the expedition about which Kendall wrote his book and that was in 1841 and this witness says that he was born in 1831. He answers that in those days he was pretty wild in his youth and did not pay any attention to such matters. He was a young man then. Being asked if many parties of American soldiers came along in those early days, he says that after the war of 1846, he knew a good many of them at Presidio and San Elizario, and that the Americans came to San Elizario and he saw them there at headquarters. He believes it was in '47 and '46 and they had a big headquarters at San Elizario. (San Elizario is about twenty miles or less below El Paso.) He does not remember when General Doniphan marched to Chihuahua. He heard of it but he does not know in which year. He thinks he was a little over 15 or 16 years old at the breaking out of the war of '46. The floods in the early days were large and usually came in May. By the 15th of May it was high and sometimes even here at Socorro they would have a hard time to keep it out of the acequias and from coming into the towns. Above White's Ranch and towards Amoles the river would be so wide as to be from hill to hill, and might wash new channels in different places and fill up old channels and open up new ones and wash down trees. During those months they could not bring down the rafts and waited until August, until the water was favorable. When there was too much water they could not come down and they would have to wait until the channel became known, and then they would come down. Sometimes they would come down when the water would cover clear up over their heads and hands, and there were times that the river also would be very high. It raised first from the snows and afterwards from the rains. When

he first saw Amoles, he knew where Alamitos was and the soldiers camp was there. He could see the soldiers camp from Alamitos not from the town of Amoles, but from the bank of the river. Alamitos was a little towards the north and Amoles this way a little towards the south. They cut wood as far north as a point west of Alamitos and higher up just in front of Alamitos. There were thirty of them cutting wood and they would extend backwards and forwards and for some distance up and down. Some of the men were in one camp and some in others. He went to the lower side and the rest of them were up above. According to his knowledge his camp was about a mile below Alamitos, probably a little more. Being then asked, how far south of Amoles was his camp, he said there were about ten of them camped about one mile below Amoles to the south. Their camp was quite a ways off from the hills on the sunset side of the valley, because they were in a bosque towards the edge of the river. Their camp was on the edge of the river and Amoles was up towards the north. From their camp Alamitos was to the north. On the other side of the river towards the east of north. He cannot estimate the distance from Alamitos to Amoles. The playa and the river between Alamitos and Amoles were quite wide because from the playa or playita to the river it was quite a distance where they would come down to cut wood. The playa was in front of Alamitos and covered quite a stretch and the river was leaning towards the east and the playa was on the west side. It was a playa that the river had left to the west. The river was running to the east. It was not a very wide place, it was a sloping place of sand. The playa took the front at Alamitos and the front of the ranch of Garcia. Alamitos was to the east and north on the other side of the river and the ranch was on the west side in the bosque. Garcia had cows and cattle. The river ran toward Alamitos to Amoles. Amoles was on the west side and Alamitos on the east side and the

river ran between the two places. It ran a little more leaning toward the east, than toward the west between those two places. A turn came from the east toward the west and then that bend would throw the water toward the east, toward Alamitos. After it made that turn it kept along the east, right along. He did not know where Sanguijuelas was, only from what people told him, as they were busy making wood. After they would once cut loose, they would be doing nothing but watching the current of the river and their rafts. When they were coming along on the river some of them would get stuck on a playa or on an obstruction and then they would have to stop and get those out that were stuck and take those out that were stuck on the obstruction and then they would go on traveling again and that kept everybody busy all the time. That is the reason they were together so as to help each other out when they were in trouble. They cut wood from the bosque up and below the ranch. The ranch house of Garcia was on the edge of the bosque on the west side. There was no town of Amoles in the time that he was there, and being asked, in Question 386, if he did know a place called Amoles "that ranch of Garcia's", he does not know if that was where the town afterwards was, he only knew the ranch. He did not afterwards know a town of Amoles, nor does he know it now. When he made the second trip to the Garcia ranch there was no town there, just the house. When he went up in '60 there was no town at Amoles, no town or church either. There were only about two houses there on the third trip which he made. On the second trip only the ranch of Garcia. There were some people living there because at that ranch then Garcia did not live there. He was already dead. He was already dead when he made the first trip. It was named the ranch of Garcia only, because according to his understanding, this ranch of Garcia was there before the town of Dona Ana. According to what they told him, the ranch was already there since 1830. At his first trip

there were about four men at the ranch with a herder by the name of Lolo. They were making cheese there. One house was made of mud or adobe where they would all join together and sleep, and the other was of wood or sticks, a jacal. They never prohibited the cutting of wood. The whole bosque was free and anybody could cut without paying. He was cutting wood and making rafts for himself. He lived in Socorro and was invited by his uncle to go along to cut wood and then he came and cut wood for himself and that wood he sold here at the dam to the people in Paso del Norte. It would all come to the dam and there is where they would buy it. The mill was to the north of the principal plaza of Juarez, but the distance he does not know. He cannot give the distance to the dam, but it was quite a distance. From the flour mill to the dam might have been about two miles or a mile and a half, but he does not know the distance. It was far off. He never saw more than one mill at that place, but there were other water mills to the center of the plaza, to the Chamisal. There were mills there anywhere because there were a good many wards or precincts. They all centered to the east side of the Paso del Norte and some to the south. From the plaza of Juarez, the precincts are Chamisal, then Playa, Los Charcos, La Playa, Senecu, Los Alamos, Los Salebar, El Barrial, and in each of these places he believes there was a mill, a little mill. There was one at the Chamisal on the other side of the river and they got water for that mill from the dam through the canal. The mill at the lower edge of the canon was the first mill and there was no other mill near that. That mill was on the other side of the river. He does not know who owned it and afterwards there was another mill at this place where we are which belonged to Mr. Simeon Hart, and was built as near as he can remember in the year 1850 or 1851. He came from Socorro to take flour home and got the flour from the mill on this side. When he moved to Mesilla he went on

the other side of the river. In the year 1861. He had been in Mesilla before that in 1854, when he went on this side. They left Socorro in the morning and went on the heights at Mr. White's and made supper there and after supper they hitched up and arrived at the water springs the next morning early, about eight or nine o'clock in the morning, passing Alamitos before daylight. They did not see any soldiers at Alamitos because they passed in the night. There were three carts in the party and about ten or twelve people. He does not know what they called the road on the west side of the valley, but he went up that side three times. Being asked, where the road went to the north of Garcia's house, he said, they went by the same place to Garcia's and that was the stopping place for their business. The road continued on to Chamberino. He went that way to Chamberino and to La Mesa and San Miguel and Santo Tomas and Mesilla in the year '61. He then stayed up there until now and he never came down again until '84 or '85 when he came on the train. He does not remember Price Cooper. He knew Magoffin here in this place. The house of Mr. Ponce was here to the west and the house of Magoffin to the south on this side of the river. He never knew of Magoffin having a ranch or a farm up the valley above White's Ranch and in passing with his rafts he never saw any ranch or any farm above White's Ranch. Up to 1861, he never saw any cultivated land in the valley between White's Ranch and Alamitos. He did not see anybody cultivating land on the east side of the river in the times that he was there and in those times he did not know any ranch other than that of Garcia. All of the place was vacant or unoccupied. From the water he could not see all of the valley on either side because there was bosque, but he could see the hills on both sides in coming down with the rafts. There were parts where he could not see either the one side or the other because the trees were high on the two sides. Between '49 and '54 there were changes in the

river. The changes were for example, right at Mesilla. At Mesilla at those times the river was between Mesilla and Las Cruces and then the river cut to the west and left Mesilla on the east and the river was left on the west and that way in different places he saw the river above. There was a place at Dona Ana which was then Santa Barbara and the Bonito. These places he saw the river, but where the river runs, now they are full of farms and acequias. The three times that he navigated he came down the river leaning more to the east than to the west. There was a change here at Canutillo below, more leaning to the east than to the west. That was in '54 and he thinks it was in the same year. There was such a change at or near Canutillo from '49 to '54 that a piece of bosque or tornillal that it was leaning so much towards Duraznito the river here then was leaning towards Duraznito that all these woods and everything that there was, was left to the west. There was a great deal of difference between the river of '54 and the old channel of '49 because all he saw of the woods had been destroyed to this side, to the east. It was a great stretch there that it had destroyed because there in the current, the channel, they leaned to the very edge of the bank of White and slept there in the night. The bosque was a very far stretch and was between the river of '49 and the river of '54 and the river would always lean to the east. From the years '54 to '60, when he made the last trip, he did not see any more changes there.

On re-direct examination, the witness says that Socorro is about ten or twelve miles from here and when he came down the river in 1860, he came in the same channel that he followed in 1854. There was no town called Amoles. The place where Garcia's Ranch was, was called Amoles. His camp when he was cutting wood was south of Garcia's Ranch and it might have been a mile or a mile and a half to the place where he saw the soldiers camped. His

camp was in the bend in the river near Alamitos. On the other side of the river where the soldiers were camped there were trees to the very edge of the river and the soldiers were there in a grove of trees. Between Alamitos and White's Ranch there was more bosque on the west side of the river. He knew a place on the west side which was called Santa Teresa and they used to come that way to Piedras Paradas. When he first came up that way, the river did not run very near to Santa Teresa or Piedras Paradas. It was very far to the river toward the east.

We now come to the testimony of

SEVERO DE LA O

which begins on page 799.

This witness says he lives in Dona Ana and has lived there from 1857 to the present time. Before he went to Dona Ana he lived at Senecu'. He had never gone up the river before. He went to Dona Ana to live in 1857 when he was a little less than seven years old and he is now 69 years old. He then went with his father and mother, and they traveled on the Paseno Road on the other side of the river. He says he went up the first time when he was about 7 years old, and came back seven years afterwards and between those two times he did not travel along the river at all. Being asked, what year it was when he was 14 years old and went there again, he says it was in '57, and this seems to be correct, taken in connection with his age of 69 years, which would make the date of his birth 1843 or 1844. As he states on cross-examination when he came down he left Mesilla on the other side of the river and crossed the river a little above Alamitos and slept at the station of Alamitos and then followed down on this side of the river. At Alamitos he saw the river and it was near the station, about 50 yards. Below Alamitos the river ran straight, but he cannot tell for what

distance. He was traveling on a cart and the road was three or four hundred yards from the station. The road went right to the station and then it went towards the east. He never knew the Calero de Gualdarama. The road that they traveled down with the carts was on top of the hills. He did not become acquainted with a place called La Bruja, nor the Estero de las Sanguijuelas. He heard of it, but did not know it. He knows the place they now call Vinton, where there are some brick yards. By the road they passed that place and the road was very near to the place now called Vinton. He knows the place now called New Canutillo and has seen it recently. The river is running there now as it ran at that time. He knew no estero a little north of that place which they now call New Canutillo. He did not see the beaver dam in the river below New Canutillo. He knew Doroteo Salado, who lived at Canutillo Viejo. When he traveled down the river Salado was there. The river was near Salado's house. Salado got his drinking water from a little spring about 25 or 30 yards from the house between the river and the house and very near the bank of the river. Above Vinton the river made a small bend. Below Vinton it had another bend larger than the first one and then it would strike the hills. From the end of that bend it ran straight to Salado's place, close to the hills, and the road run on the hills. He knew a place called Duraznito and there was a peach tree there that came by itself, and that was the reason why they called it Duraznito. The river was near where the peach tree was. The hills were near the river at that place and the road at that place was on top of the hills. He did not know any road coming down to Duraznito. He stopped there to give water in the watering place that was there. They would run the oxen to the river from the hills and give them water. They did not drive the carts down to the river. They left the carts on the road and took the oxen and then took them back and hitched

them to the carts above. Above Salado's house and Duraznito, the river ran near the hills. At that time he became very well acquainted with the place called White's Ranch. Between Duraznito and White's Ranch, the road ran on the hills. The road ran on the hills all the way from Alamitos to White's Ranch. Between Duraznito and White's Ranch the river ran near the hills. At Alamitos there was a house and there were cottonwood trees there, a few, a scattered grove. On the opposite side of the river from the stage station there were many trees, a very large bosque there. That bosque extended all the way from Alamitos to White's Ranch. He did not know a part of the bosque called the Bosque de Artesa. When he went up the river at seven years of age, he went to Mesilla and stayed there about six years. When he went up the first time he traveled on the other side of the river. He does not remember anything about that road and the places on that side of the river. When he came down here at fourteen years old they were here only about eight or ten days and they then went to Dona Ana, and they went back by Alamitos and did not cross the river anywhere. Dona Ana is on the east side of the river. He came here to Senecu' to take some dishes that they had there. They went from here to Dona Ana and from Dona Ana came to Mesilla and took the balance of their dishes. At that time Mesilla was on the west side of the river. Now it is on the east side. He remembers when the river changed so as to put Mesilla on the east side and it was in '64. He was at Dona Ana at that time. It was undermining which caused the river to change above Mesilla in the place called Bosque Bedado. That bosque was on the east side of the river. There was a big flood that came at that time and that was the reason why it changed. He never saw one as large as that was. He remembers a house at White's Ranch which was on top of the hill and the river was quite close to the hills. Within the past year he has

been to these places that he has been talking about, with Mr. Reber and Mr. Van Patten and Steen, a surveyor. They went to show them the river, where the river had run in 1857 when he knew it. He was able to find the places where the river ran in 1857 and he showed all the places to Mr. Steen. After the river changed in 1864 he traveled up and down that road on the east side of the river on the hills, in '66. At that time there was not any river running at Alamitos and between Alamitos and White's Ranch. It was not running at any of the places at which he had seen it run in 1857. He does not know where the river was at that time. He did not know the Piedra de Amolar and never has known it.

On cross-examination, the witness says that when he went up in '57 he was going on 14 years old and when he first went up he was going on seven and that was in 1857. Being then asked in Question 133 if he was seven years old in 1857, he answers, that he was going on fourteen; and in answer to the next question, he says, the first time he went up was in 1851 when he was six years old and some months. He says he was born in 1844. He stayed up the river that first trip from '51 to '57. He went up on the west side of the river by the road called the Camino Paseno. He remembers about that trip only that they went, he with his father and mother. At that time he knew La Mesa on that side of the river which is on this side of what they now call San Miguel. He did not know Amoles, nor Alto de los Cuarones, nor Corral de Tapia. He knows that the Piedras Paradas were there from what his parents told him. They rested at Santa Teresa they told him. He did not see the river at Santa Teresa when they rested there. He does not remember anything that he saw. He was very small. In Question 149, counsel says to him, "The river could have been there, and you may not remember it?" To which he makes the philosophical an-

swer, "It would have been the same thing if I did not remember. It would be the same thing as not seeing it." There were Indians in the mountains in those days, but they did not see them. They returned in '57, when he was going on fourteen and the first thing he remembers about the river and other places was when he came back in '57. Being asked in Question 156, what places he remembered north of Alamitos and between there and La Mesa, he says, there were no other points except Fort Fillmore and Las Cruces on that side of the river. The road on the side of the river of Fort Fillmore was called the Government Road, and he did not say it was several hundred yards from Alamitos, but two or three hundred. Being further asked if the bosque reached from the river out to the road, he answered that to the side of the hills there was no bosque. The road ran on the edge of the hills and the hills were very near to the river. In places the river was against the hills and the road was on top of the hills. Anthony is on the hill. At the place where New Canutillo now is, when he was fourteen years old there was nothing there but the river and the road going over the hills. The road was near the edge of the river. Being then interrogated as to what he means by near and far, he finally says, that what is near you can see with the eyes and what is far also. He could see all the river from the road and he could see the river wherever he could reach with his eyesight and his eyesight can reach more than a mile, but there he did not need such a long sight, the river was very close to the hills and the road went by the edge of the hills and you could see the river well from there. Question 177 is as follows: "Which was the sunset, the high hills on the east, or the river on the west?" What this means is not clear, but through the interpreter the witness evidently got some meaning and he answered, "The river was leaning to the east against the hills." The hills to the east of the road were not very high. From

the road the river was west. He was then asked which was the "furthest" away, the high hills on the east or the river to the west, and he answers, that they were equal because the river was right against the hills and there was no space there. The line of hills from Alamitos to White's Ranch was not straight. There were no very deep bends into the hills, but there were turns or bends. The bends were to the east side. Being asked, how deep they were, he finally says that he cannot calculate the depth or heighth of those bends as he did not take the precaution to do so. Counsel then asks him to take a piece of paper and mark Alamitos at the top and White's Ranch at the bottom, and he says that White's Ranch is down below from Canutillo and a little to the east and he is then asked to put Old Canutillo between Alamitos and White's Ranch, and then to show with pencil marks how the hills curved in and out, but he says that he cannot give any instructions about the hills. He did not come to prove anything about the hills. He is then asked, how he can prove anything about the river without proving about the hills and he says that the river ran in a place that was certain and the hills are in existence today and tomorrow not, and the river and the wind destroy them; and being asked, how he can say where the river was at New Canutillo when he was fourteen years old, he answers, because it always leaves ruins or paths. He further says the hills have nothing to do with the river, and being asked if the hills keep the river from going any further east, than it does go, he says, certainly not, for that reason one always knows where it ran. It is not clear that he and counsel understood one another at this point. He then says he knows where the river ran by the river-bed and he does not take the hills into consideration in locating the river which he knew when he was fourteen years old. Being asked in Question 197 what there is now at New Canutillo to prove that the river was there when he was fourteen

years old, he answers, "Because it was there, where it ran before." He is then asked in the next question, by what object he fixes it now as being in the same place, and he answers, "Because all the men that know it and knew it in those days declare that that is where the river ran at that time." He is then asked in Question 199, how many men helped him to fix the location of the river and he answers, nobody. He says that they came together, about six of them, and all recognized it as he did. Jose Hidalgo is one, Jose Ramirez is another, Cornelio Lopez, Reyes Marquez, Isabel Banegas and himself. He is then asked if it is from what they say that he is able to fix these places, and he says, they did not say so, he says from what he knows and can fix it or locate it. He with Marquez and those other men came to recognize the river from the post at Alamitos to the White Ranch, and they were four days showing the river. He did not go over to the west side of the river to show them anything, because he did not know anything there. They crossed and on the west side they went by the edge of the monte. He did not pay any attention to what occurred on the west side, because he did not know anything. The first night they camped at Canutillo Nuevo and also the second and third night, and went home from there. At Duraznito, when he was fourteen years old, there was nothing there but the peach tree. The road was near the peach tree. Between White's Ranch and Alamitos he remembers Canutillo Viejo, Duraznito, the Ranch of White, and Alamitos. Between these places he paid no attention to the river, but he would see it running. It ran against the hills. A little below Duraznito there is a hill between the railroad and the river and it is quite high. (This is not certain as this language is in Question 223.) He went to show the river in the month of June one time only. He was at Duraznito in August when they were going to El Paso and he was fourteen years old. The river was low and it

was running then. In last June he found the signs where the peach tree was, a stump of a tree. It was there in June of this year. It was about five or six inches around. He does not know when the tree died. He saw it alive once and then afterwards he saw it dead. He saw it alive in '57. It was not on the hill, it was on the edge of the river not very far from the road. It was nearer to the edge of the hills because the road went over the hills. It was on the edge of the river. Being asked, if he covered it up, he said, it is not covered over, it is there. There was no house at Duraznito at any time. That was a watering place. They did not stop there, but they would just go down there to get water. The tree was just on one side of the watering place. From the tree to where they watered the oxen, it was about five or six yards. He did not see the tree bearing fruit. When he was fourteen years old at Old Canutillo there was the house of Salado which was a stick house, a pole house. It had a dirt floor. He only saw one house and he believes that Salado did live there. He saw him there. He might have had his family there, but the witness did not see it. He did not see anybody else there. Between Alamitos and Salado's house, the river ran straight in some places. Where Vinton is to the north it had a medium bend and to the south from the same distance it had another turn, larger than the one above. From there here it ran straight. The river runs now in the same place that it did then, only at New Canutillo. It does not run at Vinton where it did before. He does not know where the river is at Vinton. He does not know whether he could see the river now at Vinton or not. When he passed along there in June they did not see it. When he was fourteen years old the river ran from Alamitos to Vinton without making a bend. He has never seen a map and does not know what a map is. He knows how to count years, but he does not know how to read. He was baptized in Senecu' and now lives in Dona Ana. He never voted in El Paso. He went from

here at six years of age. He has been a citizen of the United States since the raising of the flag at Mesilla. He was not a citizen of Mexico. He did not live in Mesilla until 1857 and Mesilla was already in the United States. At Salado's house, the road ran straight over the hills. He got down to the river to get water because there was a way which went down to the spring. He did water the oxen at the spring. The spring water did not run into the estero, it ran to the river. The spring was close to the river, almost right on the edge of the bank. The bank was not steep at Salado's house. He watered the oxen at the spring. It had a hole there. He never went into the bosque between Alamitos and White's Ranch on the east side, because there was none. It was not necessary to cross the river to see the bosque on the other side. He did not know an island above Alamitos and he does not remember Amoles. It was not even there in those days. He knows Eugenio Van Patten and has known him about six or seven years at Las Cruces. The witness has never worked with him in elections, but he has been very much his friend for six or seven years. He first knew that he was wanted as a witness in the month of May and Antonio Barncastle notified him. He is his nephew-in-law. He told him that Eugenio Van Patten needed him in an examination of the river and that is the reason he is here. Antonio did not tell him what Don Eugenio wanted to prove by him, and he did not know when he went with the others what was wanted to be proved. He came to show them the old current of the river of the year 1857. He does not know anything of the river prior to '57. He told them that he would go and of the years that he knew the river, this way, he could give faith. He certainly told Don Eugenio that he did not know anything about the river prior to 1857. There was a surveyor along named Steen and this man here (indicating Mr. Reber). Mr. Reber stayed with them three days and three nights with a good deal of pleasure.

After a recess when the witness resumed the stand for further cross-examination, he again says that he was baptized at Seneeu' in Juarez. He has a memorandum of his baptism, but has not it here. He has it at his house. He was baptized by a Mexican priest called Perez in 1844. They camped at Canutillo Nuevo, south of the town, in a vega about 200 yards from the town in the river valley, but not in the center of the river, on the east side of the railroad. They had no tent. They had both of the wagons with a wagon cover and at night they stayed in the camp. He and others had no conversation or discussion about the early river in the '50s. They all knew something and they all knew the same thing. He does not know what Don Eugenio knew. They came there to show him. He does not know whether Don Eugenio knew as much as he did or not. He did not learn during that trip that Don Eugenio knew the river in '57. He again repeats that they all knew the same thing and being asked in Question 364 "What same thing did each of you know alike?" He answers, "The place where the river used to flow in '57, when I knew it." He is then asked in the next question, if he knew what the others knew about where the river flowed at La Bruja, and he answers, that he did not know where La Bruja was. And he says that in some places away from the river he did not know what the others knew. He is then asked, "Was La Bruja away from the river?" And he answers, that he does not know where it was. He knew the river flowed at the place called now Vinton and in '57 there was nothing there but the river and the hills. He does not know between Alamitos and Vinton how many points there are where the hills reach to the west into the river valley. He remembers the place at Vinton because you could see the hills. They were close to the river. He is then asked in Question 374, "Why do you remember one hill and not the other hill above and below it?" He answers, "It is natural. We are here now in this town,

and if I know one house here, it does not follow that I know all the others." He did not know anything about a beaver dam and he did not know anything about the bend of Uranguena and possibly he did not know all the places located by the other witnesses because he did not know them. Beginning at Alamitos the river ran next to the hills. From Alamitos it was a little west off from the hills, two or three hundred yards, more or less. Then it came towards where Anthony is now and went right against the hills. Below Anthony almost the whole distance of the river was next to the hills, and being asked in Question 386, "Right against the hills?" He answers "In parts it did, and parts it did not. Most of the hills the river was next to them, but not all of the hills." He does not know in what places the river left the hills. He is then asked, how he knows where the river always touched the hills if he does not know where the river left the hills, and he answers, that the bank of the river was already made where the water used to run at that time. Counsel then asks him in Question 389, "When was it made?" And he answers, "I do not know. Only God Almighty will know when it was made." North from Vinton there was a small curve or bend. At Vinton towards the south there was a larger bend than at the northern bend. He does not know when that came back to the hills and cannot tell the place where it came to the hills. Between Old Canutillo and White's Ranch, the river left the hills nowhere. It was not as straight as an acequia, but it came pretty straight and no bends anywhere. After '57 he next saw the river in '66. He was going to Juarez. He stopped at Alamitos. He does not know where the river was at Alamitos in '66. It had already changed its course. He could not see it from there. At Vinton, he does not know where the river ran in '66. He could not see it. He saw it at no place between Vinton and Alamitos. From Vinton to Old Canutillo he could not see the river in '66, nor at any place

south of Canutillo, nor at any place between Alamitos and White's Ranch. He does not know where the river was. The thicket was large and they used to travel on the regular road on top of the hills which was from the old river in some places near and some places far, according to the bends of the hills. He cannot say how far the old river was in yards or miles from the main road. At Vinton he does not know what distance it was and being asked to make an estimate, he says he cannot, that he came here to state what he knew. The first trip he ever made was in '57 by the road along the river in the day time. They slept at night at Alamitos and from there started during the day time and stopped at Canutillo to come to sleep at White's Ranch. At Vinton he could see the river from the road and could see it running on the edge of the hills, but he cannot say what the distance was. They stopped at Old Canutillo at noon and at no place between Canutillo and White's Ranch. The road from Canutillo to White's Ranch is up on the hills and the river was in the valley next to the hills, and there was no brush on the hills, but along the edge of the valley there were mesquite bushes. The mesquite bushes were not along the edge of the river, on top of the hills, yes. Tornillo trees grew along the river bank. Once in awhile you could see tornillo woods along the bank of the river. That was in August, the river was low running its natural course. He came down to Old Canutillo traveling on carts and stopped there to water his team. He did not drive the carts to the river, but left them on the road. Between Duraznito and White's Ranch the stage road was crooked following the points of the hills. It was more crooked than the river. Between Duraznito and White's Ranch in some places the track of the railroad is right in the middle of the old river. He never went along there but one time in 1857 and at that time the river was running and when he came back the river had made a change. It

was dry then, in '66. He is asked if he is able from that one trip when he was a boy to locate the exact places where the old river ran between White's Ranch and Alamitos, and he answers, yes; and he is then asked, if he could do that all by himself without any help from those other people, and he declares that he is not saying what he was told. He is saying what he saw himself without the help of anyone. He is then asked, if after 57 years he was able in June to go back and without the help of anyone, locate the exact channel of the river as it was in '57, and he answers, yes, sir, and he can do it again if need be. He thinks he knows where there is a little red brick house and some brick kilns at a place called White's Spur. In 1857, the river ran west of that little house and the brick kilns, but he has no idea how far to the west. When he returned on that trip, he followed the government road that went along on top of the hills and stopped at Canutillo. When they went back up the river in '57, they did not stop at White's Ranch at all. White's house was from the road towards the east and they went by the front of the house, but did not stop at the house. They went between the house and the river. And he is then badgered by counsel to say how near the house was to the river, whether it was 100 yards, 200 yards, 300 yards, 400 yards, to each of which questions, he answers, I do not know. He does not remember at what time he arrived at White's Ranch. Going up he got to Canutillo about one o'clock in the afternoon. He did not say yesterday that he made part of that trip in the night on account of the Indians, and he says that he has never been afraid of the Indians. There might be people traveled at night on account of the Indians, but he never did it himself. They left Canutillo about three o'clock and camped that night at Alamitos. The next day they went as far as Las Cruces, and the next day to Dona Ana, and the next day after that they went back to Mesilla to haul the household goods they

had at Mesilla. He cannot remember anything he did after that day. He never traveled on the west side of the river after he was seven years old. He has not said that he crossed the river in June somewhere, and he has not said that somebody crossed the river. He does not know if any of the witnesses with him crossed the river. He would have known if they had crossed the river. They did not leave him at any time that he knows. During those three days or four days, Don Eugenio did not take a party of men and go across the river. He stayed the full time that the other witnesses did. When they were traveling along with the surveyor and Don Eugenio and Mr. Reber, the witnesses gave them instructions as to where the river used to run. They told them where the river used to run. They were traveling on foot. They had a wagon, but the wagon stayed in the road and they were on foot. They traveled the river-bed on foot from New Canutillo to White's Ranch. Above there they had already been the day they arrived. They traveled in the wagons when they went back from here. From Alamitos to White's Ranch the only place that they did not walk was in front of New Canutillo where the river is running now, because there was water in the river. With the exception of that they walked all the way through, above and below that place. They all agreed as to where the river of '57 was and no man disagreed with any other man. He says the others knew just as well as he did, and in certain ways he knew as much as they did. As to where the river used to run, they all knew the same facts. On outside points the others knew more points than he knew himself. He does not know if the surveyor took down any notes. After he was through showing the river, he made a declaration to somebody who took it down in writing; and being asked, who took it down, he says, Mr. Van Patten, Mr. Reber, and Mr. Steen. They went as far as Dona Ana and came back on the following day to make the declara-

tion at the office of Mr. Van Patten. There were six of them present. Mr. Van Patten interpreted their statements and Mr. Reber wrote it down. He does not know where Mr. Reber is now. He has seen him in the court house here. All the witnesses gave testimony at the same time. They were all together. They were not sworn there. This is the only place where he was sworn. Yesterday he has been sworn here and not before. After the statement was reduced to writing he signed it and the others also and the paper was left with Mr. Van Patten.

On re-direct examination, he says that the names of his parents are Pascual de la O and Nicolasa Hernandez. He then marks the size of the stump of the peach tree about which he testified yesterday on a sheet of paper which is reproduced between pages 828 and 829 of the record. At the place now called Vinton the bend went towards the west. The river ran on the edge of the hills and this bend was quite large. He is then asked where the bend came back to the hills and he says, it was below Canutillo Nuevo some distance. The tornillo near the river bank was large and the trees were scattered far apart. They were not thick and close together.

On re-cross examination, he is led to say that he can tell a peach tree by the bark after the leaves are dead and gone, but he does not know about telling whether a tree has been rotted down or whether it has been cut down. He could tell that this peach tree was a peach tree by the bark because they know the place where the tree was. They know it well. In June he knew it to be a peach tree by the bark on the stump. That peach tree was living in '66. And being asked how tall it was, he says, as high as to where this thing is (indicating the chandelier over the commissioner's desk, about seven feet from the floor to the bottom of the chandelier). Counsel then, to test his knowledge of what an inch is, asked him how long is that pad, and he says, four inches and

six inches wide. The examiners make a statement in parenthesis that the writing tablet shown to the witness measured 5¼ inches by 8 inches. He is then asked, how many inches in a foot and he says twelve and three feet in a yard. He thinks that a vara is four inches shorter than a yard.

We now come to the testimony of

FAUSTINO ACUNA

which begins at the top of page 832.

He says he lives in Alamogordo and has lived there for fourteen years. He was born at Paso del Norte and is 72 years old, going on 73. He lived at Paso del Norte until he was twenty-five or thirty years old, and when he left Paso del Norte, he went to Tularosa, north of Alamogordo. Before he left Paso del Norte he traveled up the river between here and Amoles about four times with his mother, who used to go there every year to buy corn and other things. The first time he went up there he might have been twelve or thirteen years old. His mother used to get something with which to cook, things to sell to the laboring men and to buy corn. She made some kinds of pie and empanadas and sopaipallas and they would stay up there about a month. They would go when the wheat was harvested and afterwards in October when the corn was ripe. Sometimes they went twice a year and at other times only in October. He and his mother went up there that way about four or five years and they went on the other side of the river and returned on the same side. He traveled two or three times on the east side of the river and knew some places on both sides of the river. Going up on the west side of the river they started above the old dam of El Paso over the road called Los Canoncitos; they entered the canoncitos and came out at a place called Muleros. On leaving the hills or mountains there was a place called Vado de Muleros, or Muleros Ford. He knew the rocks called Piedras Paradas and the road that went by the canoncitos was the

old road that went through the bosque some distance from Piedras Paradas. The Piedras Paradas were on the east or south of the road. The rocks were just below the hills. The name of the road was the Paseno Road. (It may be said that the word *Paseno* indicates something pertaining to Paso and might mean an inhabitant of Paso or anything belonging to the place of that name.) When he was at the Piedras Paradas he could not see the river, which was very far towards this side and the bosque prevented his seeing the river. The Paseno Road up the river ran through the bosque and the bosque was large. He went to the town of Amoles. Going up to Amoles the Paseno Road ran through the bosque. He remembers having known Jose Maria Garcia. He does not remember well whether his house was in the ranch or in the town. He knew Simon Enriquez, who lived at Los Amoles. He could not see the river from Los Amoles; it was quite far. Between the canoncitos and Los Amoles, they did not cross the river. The house of White was on this side of the river and there what they called the Muleros was from there up. It was a stretch of country, the ancon of the bottom lands. After passing Piedras Paradas, between there and Amoles they could see the river only where they went to water the oxen and to water the oxen they had to go quite far from the road. He remembers a place called Alamitos on this side of the river. There was a ranch, some jacales, at the place called Alamitos. He does not remember very well who lived there nor what business was carried on there, but he thinks they cultivated the land. He passed by that place within the last year or year and a half. He knows a surveyor named Post, and Eugenio Van Patten and went with them to that place and saw the place which they now call Anthony. He cannot calculate the distance from Anthony to Alamitos. (It may be said here that the Spanish verb "calcular" which the interpreters translated as calculate,

while that translation agrees with some dictionaries, yet as ordinarily used means *estimate* rather than *calculate.)* He then says it was pretty near and might be a mile or mile and a half. When he went there with the surveyor and Van Patten, he found the place he had known when a boy by the name of Alamitos. When he first knew that part of the country the river was near Alamitos. He does not remember why they called the place Alamitos, but he remembers there were some cottonwood trees there of medium size. He does not remember well. When he went there with Van Patten and the surveyor, he saw some old trees. They might have been some of those trees and they might not. They were large trees. When he first knew that place there was bosque on the west side of the river, a large bosque. Below Alamitos the river ran very near the hills. At Alamitos it had some small bends, but it came right back towards the hills. He never knew Scott. He heard his name only. He does not know where he lived, but he remembers the name Scott's Station at the edge of the river at the place called Alamitos, in that neighborhood. He cannot tell exactly where. He remembers very little of the place called La Bruja. Only that they mentioned that they called some place there La Bruja. He did not know the lime kiln which was called the Calero de Gualdarama, and he does not remember any lime kiln in the hills east of the river below Alamitos. He did not know the place called the Estero de las Sanguijuelas. He only heard the name, and did not know where it was. When he went to Alamitos with Van Patten and the surveyor he does not remember very well where they went from Alamitos. From Alamitos they started on foot around there. The country looks very different now. They went from there to the place which was called Uranguena. He understands that there was land which belonged to a man by the name of Uranga. At Alamitos when he went there with Van Patten, there was water some distance from there. There was a little

water in the old river-bed and it was running in October or November of last year. After they reached Uranguena they went to a place called Loma de Arena. They visited several places along the river, but he remembers that one. He saw a place which they now call New Canutillo where there is a bridge and at that place the river runs in the same place where he knew it first. There seems to have been no change there. The first time that he passed by going to Las Cruces, he remembers having seen the house of Doroteo Salado. The river was very near that house. The wagon road was on top of the hills near that place, quite near. When he went there with Van Patten and the surveyor, he does not remember whether there was any water near the place where Salado's house was. Between the place now called New Canutillo and the place where Salado lived when he first knew the river, it ran always leaning towards this side, almost close to the edge of the hills. He never saw the beaver dam in the river. He remembers the place they called Duraznito. It was a ford and the road that crossed to the other side. He never traveled through that ford. He only heard that was a road. Duraznito was near to the hills. He never knew a man named Chapo Reyes. White's Ranch was on this side of the river, opposite where they called Vado Muleros. He thinks the ford where the people crossed the river was below the house. White's house was on top of the hills very near the river. The road was very near to the house, but he does not remember very well whether it was in front of the house or behind the house. Between Duraznito and White's Ranch, the river leaned against the hills on this side all the time straight down. From White's Ranch up there was bosque all along there and between Alamitos and Uranguena there was bosque on the other side of the river, and from there down to where Salado lived on that side you could see nothing but bosque. There was no bosque and large trees on the east side of the river. The river was very near to the hills. Going up

the river from White's Ranch the road ran on top of the hills. There were some places that they would come down on account of the heavy sand and then climb up again. At the house of Salado there was a little spring right at the edge of the river. When he went there with Van Patten and the surveyor they found the place where the spring used to be, but it must have dried up. It was very small. It was above the bank of the river. At that time he thinks he did not find any water in the river near where the spring formerly was. It was raining at that time and there was a little mud. He went with Van Patten and the surveyor to show them if he could remember some places that he knew where the river used to run before. Some places that he remembers he told them and showed them the places which he remembered. He was able to find where the river ran when he first knew it. There were six or seven men with him and he thinks they are as old as he is. They are all very old. He understands that they were pointing out some places that they knew in other times. He does not know what the surveyor was doing. They went together all the time. He thinks the surveyor was writing, taking descriptions of the places. He did not see anybody put stakes at different places along the old river. At Uranguena the river formed a bend towards the other side and afterwards it would turn back again to this side below. When it came back to this side it approached the hills where there is a bridge now which he understands is near the place called New Canutillo. At the town of Amoles there was a ditch which passed by the village and he supposes they took it from the river. When he went up to Amoles in those trips with his mother he sometimes went over to the river. With the boys they used to go there to take care of the oxen. When they used to herd them, they took them to water there. From Amoles to the river it was quite far, and between Amoles and the river there was bosque and some cultivated land. The balance was all bosque until reaching the river.

On cross-examination which begins on page 841 of the record, the witness was asked to name the six or seven men who went with him to show the river and he gives the names of Jose Enriquez and Juan de Dios Sais, and says he does not remember the names of the others because he was not acquainted with them. He heard their names in camp when they were together, but he does not know where these other ones live whose names he does not remember. He had known Jose Enriquez and Sais before. He knew Jose Enriquez at Paso del Norte when they were boys together and at Amoles when he used to make trips there when they were young men. He thinks he is older than Jose Enriquez, maybe seven or eight years older. When he first went to Amoles he was twelve or thirteen years old or less. The following year he went again and went for about three years with his mother, and he made three or four trips. The frist time he went up on this side of the river, he was perhaps seventeen or eighteen years of age and it was about '57, or '58 or '60. When he went to show the river the surveyor and Eugene Van Patten were along. The surveyor's name was something like Post. He does not remember that he showed the other Americans. They had been there before or he heard them say so, a few days before. Jose Enriquez was one that had been there. Being asked how he remembers when he went to show the river, he says, because at that time he came from his home to Las Cruces and was working there a few days then came with these men. He was doing carpentry work for Morris Freudenthal at the hotel and he paid him for his work and kept the dates. He got to Las Cruces from Alamogordo in the first part of October, the eighth or ninth of October and he worked four or five days before he went to show the river, but he does not remember how many days it was as he was at Las Cruces a few days without working, but he does not remember how many days. He first went to show

the river to the place called Canutillo. He does not remember the date, but it was one day after they left Las Cruces. He and Mr. Van Patten came on the train and there were two wagons with the other men. They got there about ten or eleven o'clock in the morning and after dinner they started and went to see a place called Gualdarama, a place that the other men knew, but he did not know it himself. He went with them and he thinks it was southeast from Canutillo, but he is not sure. He refuses to make any estimate of the distance. They then went to the place called Loma de Arena on foot, east of Gualdarama's house. He thinks it is east. They went to the Uranguena, but he does not remember which day of the trip. He does not remember where they went from Loma de Arena. The Loma de Arena is at the same place where he first knew it. The Loma de Arena when he first knew it was far on the other side of the river, on the sunset side. The river was to this side of the Loma de Arena. He does not remember where they stopped the first night after they went to show the river. The second night they slept in the hills on the other side of the river above Corral de [illegible]apia, but then he says it was on the side where the sun rises. Uranguena is on the east side of the river and was when he first knew it. When he first knew it, it was farming lands and bosque. He does not remember where the farming lands were, but there were parts that was farming land, but he does not remember how much it was. He does not remember the names of those who farmed there, nor the size of the farms. He remembers they raised corn. He does not know where they brought out the irrigation ditch and does not remember that he saw the ditch. He does not remember if Salado had a farm or not. He did not know any Americans who farmed up there. Amoles is on the other side of the river, towards the west. He then says in answer to Question 244, that he thinks he is mixed up and from several answers which he makes it seems that he is confused as to which

is the east and which is the west side of the river, but he says that when he went with his mother to Amoles from Paso del Norte he went all the way on the sunset side of the river through the Muleros Mountains by the Corral de Tapia and the Alto de los Cuarones. He remembers something about those places. He says that he used to go up the river and they started toward the side where the sun sets and were going in the direction of the west where the sun sets. And being asked in Question 265, was the river running from the north coming towards White's Ranch, north or south or east or west, he answers, that he understands it runs towards the east down, down towards the east. They always traveled going up the river toward where the sun sets and it seems to him that the river ran down towards where the sun rises. When he went to show the river he does not know if they all agreed that the river always traveled to the east and he does not know if they agreed on what they knew together. He did agree with Juan Sais and with Jose Enriquez, but he does not remember the name of Catarino Martinez. He agreed with Mr. Van Patten and with Mr. Post and he does not remember that there was any difference of opinion between any of them. He says that he remembers very little about the trip when he showed the river and that he has a very bad memory, he is so old, and he says he is very old. Being admonished by counsel to give the best answers that he can, he says, that he is only answering as to what he remembers. And he is then asked in Question 281, if his memory is so poor about things which he saw when he showed the river to Van Patten and Post, then how is he so positive about things which existed when he was a boy; and to which he answers, "It happens that I remember things better now that happened when I was a boy than things that happen to me now when I am an old man." (This answer seems to be in harmony with the general experience of mankind as to matters of memory.) He remembers that the river always turned to the east

because then they went up the river on the side where the the sun sets the river always ran down hill towards where the sun rises. On the west side he could see the river from the side of Amoles to the bosque towards the river where they used to take the oxen to water and it seems to him that it ran toward the east. Las Cruces from El Paso, Texas, is toward the west, he understands, and Alamogordo from El Paso he thinks is toward the north, and Alamogordo from Las Cruces is to the west, he understands; that is, Las Cruces is west of the other. Being then told in Question 292 that he does not know what is north and what is south, he says that he is mixed, that he gets mixed up, confused, in regard to the locations of lands, and that he cannot calculate directions. He is then asked in Question 295 if White's old ranch was south of Alamitos then which way did the river run, and he says, he thinks to the east. And being told that he is mistaken about it, he says possibly, and that he connot give a definite idea about the direction, and further that many times he gets mixed up in regard to these directions. Counsel then asks him if he is clear on other matters leaving out the matter of directions, and he says that on things he may be satisfied of then he may be very sure, and when he went to show the river when he was at the points himself he was satisfied that he knew them. Being asked how many points are there between White's Ranch and Anthony, he remembers White's house, Old Canutillo, Duraznito, and when he saw them he remembered. At Duraznito when he was a boy he remembers there was a road and he understands that that road took travelers across the river to the other side. He never crossed the river there. The men that used to go driving the wagons in which he was going to Las Cruces told him that they crossed the river there and they said the road went to Amoles. He remembers Duraznito because it was a stopping place. The road followed the edge of the hills

on this side of the valley and that place called Duraznito the road came near the river and there was an abrevadero, a place where they watered the stock near the hills and then the road followed the playa of the river. At that time the road was on top of the hills. The river was not very far from the hill road. In some places travelers used to go farther than others up on the hills. He does not know why they called that place Duraznito. If he saw a peach tree there, he does not remember it. He never heard of a peach tree being there. When he first went up the river on the east side he was by himself. He was married at Tularosa and was about 40 or 42 years old. He had been married before. He was about 35 years old because he was a widower for 5 or 8 years. He first married in about '78 at Tularosa. He married twice at Tularosa. He was about 17 or 18 years old when he first went to Las Cruces. When he went to Amoles with his mother a brother of his went, older than he. His brother was about four years older. They would leave Paso del Norte for Amoles in the morning and by noon they would get to the Canoncitos, which was a road going through a canon, the sides of which are very high and they stopped to sleep at the Muleros Ford. They had water in barrels for themselves and the oxen were taken to the river which was quite far from the road. They started from Canoncitos after they had dinner and arrived at the ford quite late in the afternoon. At the Canoncitos they did not water the oxen because they had watered them at the dam, the El Paso dam, and at night at the Muleros Ford. And he is again asked how near was that ford from the road and he says it was quite far. They did not cross the river in going from Paso del Norte to Amoles. Amoles was on that side of the river and they were following the road on the other side of the river. He then says, that Amoles was on the side where the sun rises and the river was there and Amoles was here. You reached Amoles before

you reached the river. He then says that Amoles was towards the side where the sun sets, being asked if Amoles was on the side of the river where the sun sets or on the other side where the sun rises. Where they camped the first night out of Paso del Norte was very far from Amoles and he thinks to the east of Amoles, from Amoles down the river. From Muleros they traveled through the bosque. They slept at Muleros, which was a half day's travel from Canoncitos. His brother always took him along when they took the oxen to water and they left their mother with the wagons and she would cook supper. He does not know if there were Indians in those days. They never saw any themselves. He heard that on one occasion they had killed some people above, up on the hills. He understands that the Cuarones had already been killed as he heard of the place called the Alto de los Cuarones. He does not know how long before they had been killed. On the trips which he and his brother made to Amoles with their mother sometimes some other carts accompanied them. Once they went alone, the three of them, that was the first trip and it was then they showed him the place called Alto de los Cuarones. The road ran not a very long distance from that place. The Alto de los Cuarones was a place on top of the sandy hills and the road followed below in the bosque. The hill was about 800 yards, more or less, from the road. From Alto de los Cuarones, the river where the Muleros Ford was, was a very long distance below. The Corral de Tapia was to the side where the sun sets and the Alto de los Cuarones was below the Corral de Tapia. (He may have meant the Corral de Trosas.) He was then asked in Question 376, if the Alto was above or below Corral de Tapia, and he says, he does not remember exactly whether it was below or above. Question 377 was "But the Muleros Ford was above Corral de Tapia?" And he answers, "No, sir, below". From Corral de Tapia to Canoncitos was below on the side

where the sun rises. From the Canoncitos to Piedras Paradas was about half a day's journey. After they camped at Muleros Ford they would go the next day to Piedras Paradas and they would get to Piedras Paradas about noon. From Piedras Paradas sometimes they used to stop and sleep in the bosque so as not to arrive very late at Amoles. From Paso del Norte to Amoles it took them two days, more or less. After they left Muleros Ford they would stop at night near Amoles and they would water the oxen at ditches on the Amoles farms. On the second day sometimes they arrived at night at Amoles and sometimes they remained outside of Amoles, but they took the oxen to water on the ditches that were built on the lands below. When they were at Amoles they would herd the oxen on the side of the bosque and it was then they drove the oxen to the river to water. The river was quite far from Amoles. It was very far. It might be it was a distance of a mile, more or less. It was very far from Amoles. They drove the oxen to the river because they were herding the oxen at the bosque. At Amoles the valley is a very long distance in width. It may be about three miles. It may be more than that. The ditch at Amoles he never knew where it started from. He does not remember ever going up that ditch. At Amoles when he first saw it there were houses and cows. Some men owned cows. He does not remember how many houses. He remembers the family of Don Simon Enriquez who lived there. He does not know how much farming land was there. Quite a large amount was planted there above and below Amoles and on the sunset side of Amoles and all around the town. He heard the name of Loma de Arena mentioned, but he remembers very little of it at that time. He heard the name of Corral de Trosas, but did not know where it was. He did not know a place called Bosque del Gato, nor Yerba del Manso, but he heard the name mentioned. The second night when he was showing the surveyors the river they slept near the Corral de

Tapia, which is towards the side of the river where the sun sets. He does not remember where they started from the second day. They arrived at Corral de Tapia very late and only slept there. He does not remember having seen the river run by Corral de Tapia. They were not looking for the river over there. They went all along the old El Paso road. He does not remember where they started from. When they left Corral de Tapia they went to Piedras Paradas. The night of that day they stayed quite a distance from White's house on that side. When showing the river he went to Old Amoles. From Corral de Tapia to Amoles most of the road they walked. They were not looking for a river between Corral de Tapia and Amoles. They were looking for the names of places as they were called at that time. They did not camp at Amoles, they only passed by. He does not remember how far they went. They were in Amoles a little before noon and from there they went down and he does not remember well where they camped that night. He does not know the distance from Amoles to Corral de Tapia, but he thinks it is more than three leagues. From Amoles to Corral de Tapia most of the distance they walked. The wagon followed the road and they were walking themselves, going across to shorten the distance and look at places in the bosque. And being asked what places they were looking for, he speaks of Alamo Naranjo, Yerba del Manso, Monte del Gato, and Piedras Paradas. Here occurs one of the instances of misunderstanding probably through bad interpretation. He is asked if any of the old places they were looking for were on the river in the early days, and he says, yes, and names Piedras Paradas, Corral de Tapia, Piedra de Amolar and White's house. He is then asked if the Alamo Naranjo was one of those places, and he answers, that is what people who knew the places said. He is then asked if they said it was on the old river in the early days. He answers there was no river at those places at that time, and he does not know that they were

where the river ran. There was no river there then, there was only bosque. He does not think the river had been by Corral de Trosas, but he did not know the place himself. He believes it was two days he was with the surveyors and Mr. Van Patten on the east side of the river. When they first reached White's Ranch they had come from above what is called the Piedra de Amolar which is below White's house. That piedra is below where the river joins, where there is a bridge now. He knew the place called Piedra de Amolar because the road there went up. When he was 17 years old was the first time he ever went to that road on this side of the river. When showing the river he approached Duraznito from White's Ranch, all along up the river traveling afoot. They showed the river-bed between White's Ranch and Duraznito. They could find the old river at some places and it was the same river he knew when he was a boy. He is then asked in Question 473, "Was it the river that you knew when you were 12 or 13 years old?" And he answers, "I think so", clearly indicating some misunderstanding as he had said the first time he went up the road on that side of the river was when he was 17 years old. Being asked, if he had any trouble in tracing the channel of the river, he says, yes, he could see it was something very strange to him, very different from what it was at that time. When the others mentioned to him the known places then he meditated on the matter and then he remembered. There were six or seven witnesses and the surveyor and Mr. Van Patten. Some of them were in the wagon and some were on foot. He was on foot. He walked most of the distance on foot. He thinks only two men were in the wagon between White's Ranch and Duraznito, the cook and another man. Above White's Ranch it can be noticed where the river ran at some places, but not very distinctly. The first place where he could find the old river-bed above White's Ranch as he knew it as a boy was about a half a league, more or less. There are some tornillo thickets

there where you could see ruins of the channel of the old river. There are some places where the old river bank is there and also the road on top of the hills. That road on top of the hills you can hardly notice, but very few places. There are places that you knew that it was the old road. At that place a half a league above White's Ranch, the old road is not very far from the railroad, perhaps half a mile or one mile. He says he cannot tell. And at that place he does not remember how far the old river-bed is from the railroad. After some troublesome questions about distances and the number of feet in a yard, he is finally brought to say that at that place the old channel of the river cannot be more than a quarter of a mile from the railroad track. Then he says he cannot estimate it, but it is not very far from the railroad and is on the right-hand side of the railroad going up, and is towards the side of the railroad where the sun rises. He does not remember at what place he next knew where the old river was. He remembers that the river below Duraznito ran all the time all along the edge of the hills. He thinks that everybody who was along when he showed the river agreed that the river always ran along the edge of the hills. He does not remember very well that Mr. Van Patten said the river always ran along the edge of the hills, but he thinks he said so. The hills are not in a straight line. There are a few bends in the hills between White's Ranch and Duraznito. The river did not follow those bends, but sometimes it did, but all the time it was leaning towards this side. He is then asked in Question 505, why it is he keeps saying that the river always bent to the east without somebody asking him about it, and he answers, because there was no road at that time and they always traveled on the road on the hills. He does not know why the river did not follow the curves in the hills. He says that he has been a carpenter since he was about 16 years old and has helped to build many houses and handled much lumber and handled a square,

and knows the length of it which is 24 inches on one side and 18 on the other, and he knows how to measure a little. When he first saw Alamitos he thinks there was a jacal or house at that place. Being asked in Question 524, if he did not say yesterday there were several houses, he answers, that is what is called Canutillo Viejo, and it is the same place called Canutillo and Alamitos, but he really does not remember very well. He knows where Anthony now is and it is further up the river from Old Canutillo. This side of Anthony he is not sure whether the river follows the hills or not. He is then told by counsel that he is speaking of the old river as he first knew it, and he says from Anthony down, as he remembers. the river ran by the hills at some distance. He does not remember how far. He knows the place called Vinton, but he does not know where it is. He has seen it last year. Vinton was towards the west from the railroad. He is not very sure, but he thinks it is towards the west. He thinks Vinton is west of Canutillo as it is above. He does not remember very well that the river ran near the hills when he first saw it between Vinton and Old Canutillo. It was his belief that the river always turned to the east. He does not know if he is mistaken. Between Vinton and Canutillo, in the days when he first knew the river, he thinks the river followed the hills because he always took the hill road and the most of the places down below he thinks the river was near the edge of the hills. Between Vinton and Old Canutillo it seems to him that there is a little difference in the present river and it seems to him that it runs now the same as it did before with a little difference. In a few places you can see now where the old river used to run. In some places the old bed of the river can be found. He does not know that the old bed can be found where the old bed is in the new bed. Between Canutillo and Vinton he does not know how far the present river is from the railway track. Between Vinton and Canutillo Viejo the present wagon road

is east of the railroad. At Old Canutillo he does not remember how far the present river is from the railroad, but he thinks it is quite near. He does not remember whether the river is straight or makes a bend at Old Canutillo. He thinks that above that place there is a bend, but he is not sure of it. If there is a bend, it is a bend that turns toward the west. The place where Salado's house was is west of the railroad. It was not very far, but he cannot say the distance. He did not know where a beaver dam was. When he was at Duraznito a year ago, he remembers that the river ran at that place and he thinks it runs near the railroad track. It seems to him it ran toward the west. He has lost his bearings. He does not remember very well. As the river makes bends it runs towards one side or the other, but he does not know how it runs. The river always had bends in it in some places, he thinks. When he was a boy he remembers that there was a bend at a place called Uranguena. He does not remember any other as he used to go along the main road as he traveled. When he was a boy at Amoles, with the boys of Simon Enriquez they went to herd the oxen and the cows at those places and they called it the Uranguena and that is the reason he remembers of it. He does not know where it was, but only knows that they called it Uranguena. He heard the name of the Island of Jose Maria Garcia, but he does not remember where it was. He heard the name called. He did not see the island at that time. When he was a boy and drove the oxen to the river he went from Amoles down the river in the bosque, but he does not remember how far. He does not know a place now called White's Spur. In showing the river to Mr. Van Patten below Duraznito, he saw some brick houses there, but he does not know where the place is. Last year he saw the brick kiln, but he does not know where that place was. It was above White's Ranch and he is not sure if it was below Duraznito. He does not remember how the river runs at that place. At Duraznito

when he was a boy, the wagon road went by the old road the hill road. The road came down to Duraznito. He understands that the road came to Duraznito and they crossed the river there to the other side. It was a watering place. It is impossible for him to remember from its main course how far it, the road, came down to the water's edge. He does not remember if the road made a bend to go down to Duraznito. At Old Canutillo the old road went over the hills to the east of that place. It was near to Salado's house, but he cannot estimate the distance. He then says it was about 100 yards from the house as it was a stopping place. The road came down to the place he remembers, but he is not sure. At Salado's house he does not remember that there was another road under the hills. He does not remember that he knew where Juan de Dios Sais lived. He did not know Juan de Dios Sais until last year. Last year he went with him to the place called El Salado along the old road by the river on the east side. He does not remember that he went with Sais to a place where he said he used to live. He went with him to Corral de Tapia. Being asked if he could see the present river from Corral de Tapia, he says he does not remember because the country around there was so full of esteros and ponds that he could not tell anything about the river. When he was a boy, there was no river at Corral de Tapia and no esteros there. On the road to Amoles he remembers there were some esteros in the bosque, but he does not remember where. Those esteros were not at a very long distance from the Amoles road. He does not remember the estero called the Frijol, but he remembers that a place was called Frijol. He does not remember if he ever saw it. Being asked in Question 616, if there were any esteros at Corral de Tapia a year ago, he says, yes, sir. He could see below a large pond. Then in Question 617, he is asked, "Which direction from Corral de Tapia was that large pond when you were a boy?" To which he answers, that at that time there were

no esteros at that place, which is the same as he had already testified only a few lines farther back, at the top of page 868. He was there last year and it was then when he saw the esteros. He was at Piedras Paradas last year and the river runs now against the Piedras Paradas. He does not remember that the river made changes when he was a boy. He remembers that there were some very big floods when he was a boy. He does not remember that there were any big floods when he and his mother went up the river on the west side. He remembers of a big flood at the time that the Texans came here. At that time he was living at Paso del Norte. He does not remember that he had been up the river on the east side at that time. He thinks the Texans came in '62. He does not know where they went and he does not know that they fought any battle. When he was a boy he does not know when surveyors went up the river to make a survey of it and he never heard of it. When he was a boy he knew when men went to bring down rafts. He saw them cutting the wood. He went once with his brother when he was a boy to help bring some wood and rafts, to haul wood and rafts. About ten or fifteen men went together and he was 13 or 14 years of age. He could not help them very much. He used to go there to cook for his brother. Only men went then. They went on the west side of the river. Counsel then on pages 869 and 870, tries to convict the witness of making an inconsistent statement because, as counsel told him, he had said the day before that the only trips he made on the west side was when his mother was along, and that now he says he made a trip when he was 13 years of age when his mother was not along. To which he says, that counsel asked him if he went to haul wood and rafts and his mother could not have gone with him on that occasion. When he went to raft timber he had been at Amoles already. He only went once to raft wood with his brother. In August when the river had already lowered down, is

the time he used to go. When he went with his mother to sell things to the men, it was in October. He had already made a trip to Amoles when he rafted timber and made that trip the previous year. They got the timber at a bosque called Santa Teresa. He does not know how far that bosque was from Amoles, but it is very far below Amoles. Being asked, how far it was from the Corral de Trosas, he says that he does not know what the distance was, but all around that place, above and below, was called Santa Teresa, the Bosque of Santa Teresa. They put the rafts in the river in front of the Santa Teresa bosque on this side of the bosque and the river ran along the edge of the bosque. There was a short playa between where the wood was cut and the river at that place. The channel of the river was not where they cut the wood. It ran from the edge of the bosque to the edge of the hills on this side of the river. They called all that place the Bosque of Santa Teresa to the edge of the river. He does not know if he put the raft in the river near Old Canutillo. He does not remember if he could see Old Canutillo from that bosque and he does not remember if he could see Duraznito from that bosque as they were on the other side of the river. They used to cut the wood in the bosque and put the rafts in the river. Where they made the rafts he remembers there was no bosque on this side of the river. From the hills on the west side of the valley to the place where they made the rafts it was a long distance from the hills to the bosque. It may be four miles, it may be more, three or four miles. The regular camping place at that time, after you left Canoncitos was to stop at the Muleros and from the Muleros they went into the bosque. They cut the wood farther up than the Muleros, but he does not know what the distance was. He does not remember if Duraznito could be seen from the edge of the river. The hills on the east could be plainly seen. At that place the hills were very near, the river was near the hills. They were very near the river.

Some times there was no place for a road. They went after wood and hauled it to the river. Where they put the rafts in, where they were going along with the rafts, there were some small bends in the river. He is then asked, if they put the rafts in the river above or below Duraznito, and he says, he does not know if they were near that place. They put them at the Bosque of Santa Teresa. And being told that he knew where Duraznito was, in Question 687, he answers, that at that time he had not gone on the other side. He does not know how many miles it was above White's Ranch where they put the rafts in the river. With the carts they started from Muleros after breakfast and arrived at the bosque where they cut the wood about noon or afterwards. It seems to him they cut the wood a little above Corral de Tapia. They were cutting wood for their own use, he and his brother. There were quite a lot of men that cut together, about twelve or fifteen at a time, and they all helped each other to make the raft. He remembers the names of several of the men who were along, and being asked to name them, he says, one by the name of Reducindo, another Francisco Trujillo, Francisco Abalos, Marcelino Dominguez, and he does not remember the names of the others. He thinks all of them are dead. They were old men at that time. They were grown men at that time. By Muleros he means that it was a place called that way. It was a stopping place. It was called Vado Muleros. When he went up the river with his mother they stopped at the place called Muleros, not at the ford of the river. The road is far away from the river. The stopping place was far away from the river. Muleros from Piedras Paradas is to the side where the sun rises. The Canoncitos is in the same direction, a little more towards the south, it seems to him. Muleros and Canoncitos are not near together. It is quite a distance from Canoncitos to Muleros. Muleros was to the north and the Canoncitos down below towards the south. White's house from Canoncitos was north and west.

Muleros from White's house was to the west, west and south it seems to him. From Canoncitos he does not know how near was the river. It was quite far from Canoncitos. Being asked in which direction was the nearest place from Canoncitos, he says, he does not know if it was nearer above to Muleros or from Canoncitos back towards the dam, the El Paso Dam. From Canoncitos, Piedras Paradas are on the side where the sun sets, and the Corral de Tapia from Canoncitos in about the same direction, towards the hills, and Duraznito from Canoncitos is towards the west.

On re-direct examination, he testifies that after the rafts were put in the river they took them to Paso del Norte, and they passed White's Ranch in the river. They made all the rafts and put them in the river at the same time and one man would lead ahead and the others, each one on his own raft with long poles to manage them. They always started the rafts down the river in the morning. When he went, which was only one time, they arrived at Paso del Norte the next day. They slept at Muleros because some of the rafts got out of order before getting to the canon. They slept a very little above White's Ranch in the bosque. One of the rafts got disabled and it was then about the middle of the day. Last year he came to Las Cruces when he was going to the Elephant Dam to see his children who were working there. When he came to show the river, he came on the train to Anthony and Mr. Van Patten came on the train, but none of the others. The others were in camp at Anthony waiting with the wagons. When he got off the train at Anthony he does not remember where they went. They went to several places, but a little farther along he says, that they went up to a place called Scott's Station which is the same place that he calls Alamitos, but somebody said there that it was called Scott's Station. When he went with the surveyor Post last year, he had very little difficulty in

finding the places which he knew. He says that when he saw the places that he remembered, then he remembered them when he saw the places, and he could now go out on the ground and point out to anyone the places to which he has testified. When he went to the Corral de Tapia he does not remember positively that the river was running near that place. He says you can see places where the river has run there, but he does not remember well whether he saw the river or not at the Corral de Tapia as there was so little water there. At that time there was no current. He does not know whether the surveyor knew anything about the river or not until he and the other witnesses showed him. He says he told the surveyor with reference to the river that formerly ran a long ways from Corral de Tapia. He was then asked as to the whole of the river from Alamitos to White's Ranch if the surveyor told him anything about the river or if he and the other witnesses told the surveyor. He says that he told him of the places that he knew that he remembered. He knew the places called by the names of Corral de Tapia and the Alto de los Cuarones. Coming from above down they came first to the Alto de los Cuarones. When he went with the surveyor to Canutillo Viejo, he thinks he could see the present river, and as it was translated he appears to say that he could see the river in the old river-bed where the house of Salado was. He heard it said that the Texans came in when he lived at Paso del Norte. Before that time he had been up on the east side of the river to Las Cruces and he remembers having seen a ford called Duraznito when he was going to Las Cruces. When they went down the river with the rafts of wood they passed in front of White's house, quite near to White's house. The bank was quite high.

On re-cross examination, he says, that he came here to testify on Friday. That he came from Alamogordo where he lives on the railroad. No one brought him or

came with him. When he arrived here at night no person met him and he stayed at the house of Juan Elias whom he knew before. He then says, he arrived here Thursday afternoon, in the night, and Mr. Van Patten was not here. He saw him first Friday afternoon at the Grand Hotel and he then got a room at another hotel called the Saint Charles. Mr. Van Patten got him that room. He talked to him on Friday and on Saturday but very little. Van Patten was not here Sunday. He saw him in the morning and he told the witness he was going to Ysleta. He saw him again Sunday night and on Monday and today, and all these times he has talked to Van Patten. At present he is the only one at the Saint Charles Hotel. Mr. Van Patten has a room at the Grand Hotel and the witness has been in his room. Van Patten has been in the room of the witness at the Saint Charles Hotel only once when he gave his name to get the room. Being asked if Van Patten has reminded him of the facts to be testified about, he says, that Van Patten has told him to be very careful and have a good memory so as to be able to give answers correctly so far as he can remember and tell the truth. The witness does not remember that Van Patten assisted him where he could not well remember about the river. At places like Old Canutillo and Duraznito, Van Patten did not help to remind him. The witness could remember those places to the best of his recollection where they used to be at that time. He did not help to remind the witness of the fact that the river always turned to the east. The witness says he was under that impression and it may be that he is mistaken. His idea is that it ran to the east. Van Patten did not tell him what to say. The witness does not remember that Van Patten reminded him about where—and at this point counsel interrupted him with another question, and asked him in Question 796, if Van Patten did not remind him of some fact in connection with his testimony, and he answers in the negative, and no one since he has been here has helped him to

remind him of the facts which might be asked. He says he has been laboring hard with his memory as to the facts as it has been so long ago since it passed. He told no one on the outside that he was having trouble remembering these things. After he had shown the river he made a declaration, but he is not sure who took it down. He thinks it was at Las Cruces. It was afterwards typewritten and he signed that paper or statement. He was sworn to tell the truth, but he does not remember the name of the man who administered the oath. He does not remember his name. Mr. Van Patten and the surveyor were there and he thinks there was another man, but he does not remember.

Upon re-direct examination, the witness makes it plain that he arrived here Thursday night and that it was the second day after that when he talked with the Attorney General for New Mexico.

On re-cross examination, he says, that when he made the declaration at Las Cruces he does not remember whether he put in all that he has stated here. He thinks he told about rafting wood down the river. He was paid for the time it took to show the river two dollars a day by Mr. Van Patten.

We now come to the testimony of

SANTOS ALVAREZ

which begins on page 882.

This witness says he lives at Dona Ana and is 71 years old and was born in El Paso, Mexico, and was about six years old when he went to New Mexico to Dona Ana, and has lived there up to the present time. The first trip going up to Dona Ana he does not remember. He was too small. He made a trip from Dona Ana to Paso del Norte when he was about 13 or 14 years old, with his mother and stayed a few days and then went

back to Dona Ana. He traveled coming down and going back on the east side. Coming down they came in carts or wagons. He does not remember very well. It took about two days and a half to come from Dona Ana to Paso del Norte. After leaving Dona Ana they camped the first night a little above Alamitos, he thinks but is not sure. At that time he became acquainted with Alamitos. There was a house there and the traveling companions said there was a man by the name of Scott there. At that place he saw the river, but he did not go to the house. The road was some ways off, but you could see near the edge of the river. He never went to that house, he passed by only. At the edge of the river there were trees and willows. There was a small bosque there as he remembers it and one could see the trees on the other side. He recently revisited that place and could recognize it with other companions who were with him. Being asked if he found there any of the trees which he knew when he first saw the place, he says, "O only of the trees, which is in the bank of the river; and a willow tree on one side". The river is not running there now. He is then shown a photograph and says that looks like a tree that is there and this other one is the willow, and he saw it exactly the same. The photograph is put in evidence as Exhibit No. 7. He knows a place which is called Anthony and Alamitos is above Anthony, but he cannot tell the distance. It is a little far from the town. From there they came down in an automobile. From Alamitos the river ran this way and then it would form a bend. The bend would turn toward the east and then started again down. When it turned to the east it went near the hills. He afterwards knew the place called the Calero de Gualdarama. He does not remember there was a lime kiln there when he was a boy, but recently he has seen it. When he was a boy he cannot tell at that place whether the river ran near to or far from that place because he does not remember. Some companions pointed out a place

which they said was called La Bruja, afterward, when he was a man already, on another trip when he went to El Paso. He went with his family then. He cannot tell how near the Alto de las Brujas was to the lime kiln, but he thinks it was near. It seems to him there was a bend at or near the place called La Bruja, but he is not sure. When he recently visited these places he saw a place called Vinton where there are brick yards. He saw it some years ago when they first put the brick kiln there. In front of that place he cannot tell how the river ran when he first knew it, he does not remember. He knows the place called New Canutillo. When he went to see the river with other people they passed by Canutillo Nuevo with Mr. Post and some others. He saw the bridge which has been built there and when he was a boy the river was a little far from the place where the bridge is, towards the west. He and the others recently visited these places to see if they knew them. Being asked if he remembers the place where Doroteo Salado lived, he says that at that time he saw a little house from the road towards the west, but he did not stop at that house and only saw it as he passed by. You could see the river from the road rather near that house. When he went with Mr. Post and the others they were right at the place where was the ruins of the house. There is no river running close to those ruins now. The hills are rather near to the east. He does not remember when the river changed and went away from that place. It seems to him that it was about 1864 that he came to El Paso and did not see the river there then. That was about the same time as the flood which put Mesilla on this side of the river. He remembers that big flood and he remembers when the soldiers from Texas came up the river and that big flood was when they came. There was some change in the course of the river between Alamitos and White's Ranch. The river had gone to the other side about the time of the big flood that changed Mesilla. Before that big flood there had not been changes

in the river between Alamitos and White's Ranch. It ran on the edge of the hills on the east side. He knew a place called Duraznito which was a peach tree at a stopping place. The tree was rather near the road. Most of the time travelers used to stop there, sometimes to sleep there and somtimes to rest. There was good pasture there and grass. When he went recently with Mr. Post they passed by Duraznito, but he could not find the peach tree. There is a playa there now. They found the place where the peach tree had been, but they did not find any remains of the tree. The river was rather far from the peach tree and the tree was nearer to the hills. On the other side of the river there was some bosque. He does not remember very well if there was any bosque on the east side of the river, but he thinks not. He thinks there was some tornillo. Between Alamitos and White's Ranch on the east side, he does not remember whether there was any large bosque or not. On one of the trips which he made to El Paso somebody told him about the Piedra de Amolar which is below White's house, very near the river. From White's Ranch down to the Piedra de Amolar, the river runs near the hills. When he went along the river with Mr. Post, he did not show him all the places. Other companions who were there showed him. He did not. He says, however, that he showed him where Alamitos was. He told him that was the place where Salado used to live, and the other companions also knew the place. He told him the place where Duraznito was. He showed him how the river ran below Alamitos and there they walked all over the place, all of them who were there. White's Ranch was on top of the hills on a high place close to the edge of the river. He knew about the place called Vado de Muleros where they told him that it was, and it was below White's house. They used to call that place Muleros on the west side of the river. When he was young he did not become acquainted with places on the west side of the river, only when he got to be a grown

man. He never knew anything about the beaver dam in the river above where Salado lived. He heard something about the Estero de Sanguijuelas, but he cannot tell exactly where it was. He remembers something of an estero north of New Canutillo which was near the river and the road passed near that estero on the east side The road was higher up than the estero. He does not remember very well how near the estero was to the river and he does not say anything that he does not know.

On cross-examination, he says, that he is testifying to what he saw when he was 13 years old and what he saw later, or both times. Being asked who went with him when he went with Mr. Van Patten and the surveyor, he says Leonidas Provencio, Eligio Perea, Amado Chaves, and Mr. Baker, and another man whom he does not know. He thinks Mr. Chaves did not know anything about the river, nor Mr. Baker, and when he got off and walked and showed the river they walked too with him, and Mr. Leonidas Provencio and Eligio Perea. Mr. Chaves walked with him and sometimes Mr. Baker walked with him and Mr. Van Patten walked with him and rode in the automobile with him. He said what he knew about the old river and the witness said what he knew. The surveyor did not say what he knew. He was there with them and the witness does not know what the purpose of his being there was. Mr. Perea said what he knew and the other witnesses what they knew. He thinks his recollection is good. He was engaged in showing the river one day only, beginning at Alamitos and finishing at White's house, and coming here to El Paso the same afternoon where he stayed all night. He thinks he got here about five o'clock. They left the automobile on the road sometimes and they got off and walked. They got off of the automobile at Canutillo and stayed there a little while and then went to different places in the automobile. They got off at Duraznito and where the Salado house was, and the last

place a little above White's Ranch. They rode in the automobile until they came to El Paso. He had never ridden in an automobile before and it ran slow and fast, both. The automobile traveled on the new graded road and from that road the old stage road can be seen at different places, the old road that went up to the hills and came down to the bottoms. The old road can be seen there where the wagons went up the hills as the valley was full of water. Those roads he traveled after he was a man. You can see the old roads plainly where they existed before. Being asked in Question 185, if he does not know that for the last twenty years they have been making roads in all places and all directions up there, he says, yes, he has seen them. He is then asked how he can pick out one and say that that was the old road, and he says, because the old roads are all there, the signs of the old road are already there at several places. He paid attention to the river because at several places it came near the hills, in a few places. Between those places it ran towards the east. He paid attention to the river at several places where he watered his stock and at other places too. He had no interest whatever in watching any other place. He was never in the bosque on the other side of the river. He was on the other side of the river on two occasions. In 1887 going to El Paso, was the last trip he made. He does not remember when the first trip was, but he remembers being there once before. In '87 was the second time that he traveled there. In 1887 he was following some stock that had been stolen from him, but he cannot give an estimate of the time between the first and the second trip on the west side. On the first trip on the west side he did not pay attention at what points the river was. He saw the river on the west side. He remembers that on the second trip the river ran near Piedras Paradas. He does not remember any other points above Piedras Paradas. The towns on the other side, he knows them all, from San Miguel to La

Union. He knew Amoles on the first trip that he made. It was a little town just starting, on the top of the hills where it is now. It is now called La Union. He never knew the old town of Amoles. The trip which he remembers was in '87, and he does not remember exactly how long before that he made the first trip on that side. That first trip he was going to El Paso from Dona Ana alone on horseback. He was coming to see his people who lived in Mexico. From Dona Ana he came to San Miguel from Las Cruces and there to Mesilla and from there to San Miguel. He crossed the river at Mesilla. San Miguel is on the other side of the river towards the south, on the east side down below. From San Miguel he came to La Mesa, from there to Chamberino, to Nombre de Dios, and the last place to La Union. He did not see the river at those places along the road, but he thinks in one or two places the river came near the road. At La Union he saw the river very near towards the east. When he made the second trip he does not know very well whether the river was in the same place or not. He does not remember. He does not speak English. He thinks he can measure in feet, yards, or varas, and he knows east and west. From Alamitos the river ran south. The first place where he showed the river was at Alamitos about noon. Mr. Reber was not there. Mr. Perea was there. He thinks that he and Perea knew about the same thing concerning the old river. He arrived at the place first. Mr. Van Patten was there also. Mr. Van Patten and Perea went together and Mr. Baker was with him. They started from Anthony and went where the other people were, When they came back from Alamitos to Anthony they walked. They started on foot from the very tree that is on the edge of the bank, all the way where the river used to run until they arrived at Anthony. Right there he knew where the river used to run as he saw it at first. When he went there with the surveyor, he did not see any water at the foot of the tree which is shown on

Exhibit No. 7. He is then asked if he recognizes it as one of the trees he knew as a boy, and he says, yes, and he is then asked in Question 282, "Which one of the cottonwood trees that you saw as a boy is this?" And he says, "There were at that time several other trees". He is then asked in Question 283, "Which one of the number of trees which you saw there as a boy is this particular tree?" And he answers, "It is one of those that I remember was at the place, but there were other trees there". He is then asked, "How many other trees were there when you first went?" And he answers, "I cannot state how many. I did not count them." There was a little bosque that was seen from the road. He cannot say that the willow tree, referring to the one shown in the picture, was there when he was a boy. The cottonwood tree was there and was one of the trees that was there. He had no trouble finding a river-bed at Alamitos and they passed where they considered the river ran, himself and the other people. At the foot of this cottonwood tree you can notice there a bank, but he does not know when that bank was made. And being asked in Question 306, how many times has the river left that place and come back to that place since he first saw it, he answers, he could not tell how many times. He does not remember that it ever left that place and came back to it, but it did leave the place. He does not know when it left it. When they walked down to Anthony they got into the automobile at Anthony. Between Alamitos and Anthony the river ran near the road, and it could be seen near towards the west. The present wagon road is east of the railroad in parts and in parts on the other side. In several places it crosses the railroad near Anthony. From Anthony this way the wagon road is towards the east of the railroad. He does not remember whether the old river follows straight along the foothills from Anthony to a point three miles south of Anthony. He had walked it over several times; the first time he thinks in '65, when he was coming

to El Paso with his family. He did not find the river there in '65, but it was necessary to go on the hill road because it was very muddy there. He was in wagons and carts. He does not remember very well if he could see the river from Anthony in '65. He could not see it at Alamitos and thinks it had already changed. He then explains in answer to the question, that he meant to say that he went along the road several times, not along the river. From the road he saw the river in '65 in several places where it made bends and went to the edge of the hills. He cannot remember in how many places this side of Alamitos he could see the river, but he remembers that at White's house the river struck the bank very near the house and in '65, he remembers it was quite near to Canutillo Viejo. He does not remember if the river came to the edge of the hills where the brick kilns are at Vinton in '65, and he does not remember if the river came to the edge of the hills on the east side at Duraznito in '65. He thinks the river had changed already. At Alamitos the river did not run by the cottonwood tree in '65. When he was 14 years old, he does not remember well where the river ran with reference to where Vinton now is. He has passed Vinton several times, but cannot tell where the river runs now, and he cannot tell where the river runs now half way from Old Canutillo to the Vinton brick yards. Being asked, how the river runs today at the place where he was told Gualdarama's lime kiln was, he says, he knows the place well where Gualdarama used to live, but as he has passed the place he has not paid any notice as to where the river runs. When he was 14 years old at that place the river was in some parts near the road. In the early days when he was a boy, from Alamitos down to White's Ranch there was one road, but when the river rose and when the water came near the hills, they had to make a turn up on the hills for another road. He does not remember that the road was in the valley in dry times. He says he cannot make an

estimate as to what the greatest distance was where the road was away from where the railroad now is. He remembers that where the road comes from Anthony this way, the railroad took in several parts some of the old road near the hills. Below Anthony he can show the river at Canutillo Viejo where Salado's house was. They got off of the automobile to examine the place. He thinks between Anthony and Salado's house they got off the automobile at a place called Duraznito, but in answer to the next question, he says, that he thinks Duraznito is below Salado's house. They got off at Duraznito, at Salado's house, and at Canutillo Viejo. When he rode in the automobile all his companions rode likewise, and when he walked, they walked. At Duraznito they walked to a point where the river had changed towards the west. He does not remember that Mr. Van Patten said, here is where the old channel used to be. He does not know who first said, here is where the old river used to be, if it was himself or some of the others. They were all there in the place. He does not remember who ordered the automobile to stop at those places. He says he could not tell if it was the bed of the river he knew as a boy, and being asked how he knew that where he stopped was the place known as Duraznito when he was a boy, he says, because travelers coming backwards and forwards to Dona Ana stopped there to cook their dinners and he recognized it by the place and there is no small peach tree there now. There is only the playa there. He thinks the playa has existed there all the years, but cannot say exactly. He thinks he made this trip with Mr. Van Patten in November. He did not tell Mr. Van Patten to stop the automobile at Duraznito, but the other companions said so and he got off with them. Leonidas Provencio said stop, and Eligio Perea. They said we will go and examine the place called Duraznito. It is a large playa. There is nothing but willow bushes there. He thinks the

playa was left by the river which he knew when he was 14 years old and he is certain about that. It is a very large playa. It was left by the river. At this point on page 905, counsel in Question 395, says that the river that made that playa was running east and west, and he answers in the negative, and counsel tells him that he just now said that it ran east and west, but there is nothing in the record to justify that statement. A little further down he says the old river ran from north to south. At Duraznito he did not find the present river and did not see the river at all because it is on the other side. It ran on the other side against the hills. They stopped at New Canutillo in the automobile, but he did not get out himself, but the others got out and he does not know what their object was in getting out. Being then asked, if the only places which he showed the river were at Alamitos, Old Canutillo, and Duraznito, he answers, Alamitos, Old Canutillo and that he did not show the river at Duraznito. Perea and the others showed where it was and he thought himself that it was the same place and White's Ranch. At Alamitos the only thing was the cottonwood tree which he thought was one of those that was there at that place before. It shows everywhere the river ran. At Duraznito the peach tree was dead in '65 because he did not see it. He does not remember below Duraznito when he was a boy, an estero over towards the edge of the hills. It shows that there is a big bend. There was a large bend of the road towards the hills to which the river overflowed when it rose, and at several bends when the river rose it used to overflow the low places in the road. When it rose very much it overflowed and filled everything with water and you had to take the hill road to go up. Being asked, if there was another road besides the one in the valley, he says, there were some cut-offs on the hills by which you traveled. He remembers some salt flats up there and the river was west of those salt flats. He cannot tell how far off the river was. You could see the river

from the top of the hills several places, but you could not from the road that ran through these flats. He does not remember if there was some brush between the salt flats and the river. There were plenty of Indians up there in the country all the time. They were very bad and killed people. He does not believe it was very safe for women and children to go up the valley on the west side, but when families came there were men accompanied them. Up to '65 when he came to El Paso with his family, the Indians were very bad. Being asked, if in those early days, the river had big floods, he says, the only very great rising of the river that he saw was at the time that the Texans came, but he does not remember the year. Some times prior to that there were floods which overflowed the land. When he was about 14 years old he cannot tell that the floods were big enough to change the channel of the river, he does not remember. The river made many bends. The river never ran straight. Since his first knowledge of it, it used to make many bends.

We now come to the testimony of

VICTORIANO DURAN

which begins on page 909.

This witness lives in La Luz Canon in Otero County, New Mexico. He was born in 1844 in Paso del Norte and lived there up to 1850 when he went to Mesilla with his father, Juan Duran. He went up to Mesilla on the other side of the river, on the side of Piedras Paradas. He was very young, but he remembers something about that first trip because he walked part of the way. He came back to Paso del Norte in 1852, on this side of the river, on the east side, and then stayed at Paso del Norte about eight months. He then went to Mesilla again and they lived at Mesilla until 1864, and after that he went to Tularosa. He never returned to live at Mesilla or in that

vicinity. During those early years he traveled to El Paso on both sides of the river, and he became well acquainted with the river and the different places along the river. He knew the place called Alamitos. He first knew that place about 1856. He had seen it before 1856, but then they stopped there. He first saw that place in 1852. Alamitos is in front and opposite to the Puerto of the Soledad. (This phrase refers to a pass through the mountains some miles east of the river.) Alamitos was very near to the river. He knows the town called Anthony and has recently seen that place. Alamitos is up from Anthony and is near. When he first knew that place, the river below Alamitos ran at the edge of the hills. It ran straight part of the time and then it formed a bend. The bend must have been three-quarters of a mile, more or less. At the lower end of that bend, the river approached the hills, he thinks it was about a quarter of a mile. It was about 200 yards from the hills below the bend. After the river made the bend the river went near the hills and ran straight down. Where it came back to the hills he heard the place was called Tres Alamos. He has recently seen the railroad at that place, and where the river used to run is the railroad now. He knew the lime kiln called the Calero de Gualdarama. It was about half a mile from the place called La Bruja. It is not very far. From Tres Alamos down to where that lime kiln was, the river ran straight to the edge of the hills. La Bruja was a round bend and the hill was called La Bruja. The river was near to that bend and below that place it ran straight at first and then it formed a bend and turned again towards the place called Sanguijuelas. Sanguijuelas is a little animal. It was about a quarter of a mile from the river. There was an estero there where the leeches lived. After the river came back near that place it ran along the hills. He has seen the place called New Canutillo near which there is a bridge. When he first was acquainted with the river it ran along the hills right where

that bridge is now. He has seen the beaver dam in the river below that place. It was a branch of the river, and the beaver made a kind of a dam there with sticks and brush. The dam did not go entirely across the river. One branch ran at the foot of the hills and the dam was across a small branch of the river leaving an island between them. The principal current of the river was in the branch which ran against the side of the hills. The two branches came together further down, but he does not know the name of the place where they came together. It was quite far where they came together. He knew a place called Canutillo in those early days. Nobody lived there. There were no houses or anything else there. He never saw a spring in that vicinity. He did not know anybody by the name of Leonardo Apodaca. He did not know Duraznito. He knew the place, but he did not know there was a tree there. There was a bosque and willows there and the river ran by there. The river was very near the foothills at that place. He became acquainted with the place called White's Ranch which was in front of Muleros on the hills a little above the Muleros Ford. What he calls Muleros was large, all that place was called Muleros. When he first knew White's Ranch the river was very near, about ten steps from where the road was. There was a wagon road along that side of the river between White's Ranch and Alamitos, and it ran on the hills. When the water from the river did not overflow the bottom lands it used to come down at places in the valley. He knew the Piedra de Amolar. The Piedra de Amolar are in front, opposite the Cerro Prieto down below White's Ranch and very near the head of the canon, three or four hundred yards at the most. He has recently seen that place and he saw a bridge near there. The bridge is right there at the Piedra de Amolar. When he first knew the Piedras Paradas, the river was very far from those rocks, and there was bosque and tornillo between the Piedras Paradas and the river. He could not see the

river from Piedras Paradas on account of the bosque. He became acquainted with the Corral de Tapia. No one lived there when he knew that place. It was on the hills and the river was very far from it, on the other side towards the east. They could not see the river until they got to Corral de Trosas on account of the bosque there. The Corral de Trosas was a stopping place along the road, and was near the road. The Corral de Trosas was in the valley below the hills at the edge of the bosque and the road was on the side of the bosque going up. The river was far on the other side. When they stopped there they got water for the animals from the estero. The overflow of the river left esteros there. He became well acquainted with the Amoles road which ran along through the bosque. In those early days Leon Alvarez and Simon Enriquez lived at Amoles. It was a small place and the river was far from Amoles toward the east. You could see the banks of the river from Amoles, the banks on the other side, and you could see the water shining in some places. He was last at the old town of Amoles in 1873, and at that time the town was destroyed. He does not know when it was destroyed. It was after he moved away to Tularosa. He remembers the raising of the flag at Mesilla and they were right at the cottonwood tree or flag pole at that time. He was very small at that time and does not remember who raised the flag, but he was there. There were a good many people there.

On cross-examination this witness says that he has seen the river recently, on Sunday and Monday last, and that he came to town on Friday before he went to see the river. Yesterday he was on the other side of the river with a surveyor and Mr. Eugene Van Patten and two more, whose names he does not know. He has not made any declaration until now. He has only been showing the surveyor the places. He says four came from Tularosa and there were two other men and the surveyor and the

man who was driving the wagon. From Tularosa, Jose Martinez, Sixto Garcia, himself, and Seferino Gallegos were the four who came. The men from Tularosa went along with him to show the river. Being asked, what became of the two men whose names he does not know, he says, here is one of them, indicating Mr. W. H. Austin, who went with him to Amoles, to Corral de Trosas, to Corral de Tapia, to Piedras Paradas, and to Alamitos. There were three Americans in that party, Mr. Van Patten, Mr. Austin, and the surveyor. They stayed Sunday night at Anthony, going up from here on the east side in an automobile. Some went on the train. In the automobile he and his compadre Jose Martinez and this gentleman, indicating Mr. Austin and the one who was driving the automobile. They left El Paso very late and stayed in a house in Anthony. He thinks Mr. Austin stopped at the surveyor's house whose name he did not know. Sunday morning they went to Alamitos to find out if he could show the surveyor the place where Alamitos was. Eugenio Van Patten told him that was the purpose. He asked the witness if that was the place he knew before and he said, yes, and he showed him a river-bed and asked him if it was the river-bed that he knew. This language, however, is put in his mouth by the questions. He says that he told Van Patten that he had known it before in the year 1852 when he was about eight years old. He remembers very well what he saw then and that year was the first time he was there. He remembers what he saw in 1852 and every year from the years afterwards. From the year 1856 he used to travel frequently. He says that he had seen the place from the year 1856 many times and then he repeats that he says that the first time he was at that place was in 1852 and from 1856 on he was there many times. Between '52 and '56 he saw the river along there three or four times. He knew the river up to 1864. He went to Tularosa on the 17th day of December. He says he did not live near the river until 1864 and that what

he said was that he knew the river as he was coming down to Paso del Norte on several trips. At the beginning of the year 1864 he made a trip on horseback on the east side of the river and went back on the other side of the river by La Mesa in the month of August, on the tenth day of August and he remembers it to be that date because he came to the feast at San Lorenzo on the other side of the river at the Real. The tenth day of August was the day fixed for the feast and counsel for defendant, evidently ignorant of Saints' days, asks if that is always the day and the witness says "All the time". In the year 1862 the river changed at Mesilla and as long as he knew it between '52 and '62 it ran in the same places. He knew the river in the year 1859 and was taking care of some cattle at that time in '59. They had a ranch at the claim on the bosque on the other side of the river at the place called the Pelillar which was near the road that came down from the Cuesta del Poleo. The road went into the bosque. He was not permanently herding the cattle, but used to go about every fifteen days to bring provisions for the herders. They had about 50 head of cattle. The cattle were there in 1858 while he lived at Mesilla. Being asked how far from White's Ranch was that cattle ranch, he says the river was between, the ranch was at the bend in the bosque. The bend was very large, between Piedras Paradas and Santa Teresa. The river was running straight from Santa Teresa down along the edge of the hills. From Santa Teresa to Corral de Tapia was about one mile, more or less. The Corral de Tapia was at a very old arroyo and was on the hill. The Corral de Tapia was about 500 yards from the road, more or less. They used to pen their cattle in the bosque, but that was not in the Corral de Tapia, that was near the Muleros. The cattle did not range as far as Corral de Tapia. He used to come about every fifteen days to see those cattle, but he cannot state the number of times. He came usually on horseback and would not stop at

Amoles. He started from La Mesa and came to the ranch and from the ranch many times he came to El Paso, sometimes on the west side and sometimes on the east side. From Los Amoles he could see the river, but not from Corral de Trosas as the road ran through the bosque. The river was not near Amoles, it was very far, near the hills. He knew Amoles before '64 and says that he passed by Amoles in '64, but it was destroyed already. He passed there after Amoles had been destroyed. He does not believe he said that Amoles was at the same place until he moved to Tularosa. He thinks he did not say it. If he said it, he does not remember but does not believe he did. In 1864, he left there and after 1864 he came from Tularosa and passed by that place then. In 1873 the river was running on this other side at Santa Teresa on the west side. He does not remember how near it ran in 1873 to Corral de Trosas because he did not pay much attention as he was riding horseback. On the tenth day of August, 1864, the river was running by this arroyo by Corral de Trosas and he took the upper road on the hills and at that time the river was running where Old Amoles used to be. It took the arroyo of Corral de Trosas and came to the hills on this side. The arroyo of Corral de Trosas was a big arroyo, but he does not know how long it had been there. It ran along the side of the road from north to south. He says he believes he has not said that he found anything at Alamitos, but he found Alamitos and there were some trees at Alamitos in 1852 when he was there. Being asked how many trees were there he says he did not count them. There were several. He stopped there in '52 to camp, to water, in the day, the night, and the following day. They stopped because it was a stopping place and were detained there. Below Alamitos on this side is where the watering place was. Above Alamitos there were some water holes but he refers to the watering places at the river. When he passed there in 1852 it was in the winter. There were no watering

places between Alamitos and Las Cruces. When they stayed all night and part of the day at Alamitos, they started from Mesilla and went to Las Cruces only passing by and they were coming down to El Paso. They remained at El Paso about fifteen or twenty days. Being asked by what he remembers that it was 1852, he says, because they were traveling very slowly with oxen and carts and he would remember it because his father showed him the watering places and other places. He showed him Alamitos, La Bruja, where Tres Alamos was, Canutillo, the Sanguijuelas Arroyo, and told him their names. This was when he was eight years old and his father told him to remember those places and remember what their names were because it was necessary for him when he should happen to travel along there to know those names and those places. And being asked what the names had to do with it, he says, that at that time there were quite a lot of wild Indians and these Indians passed by these places once in a while. The Indians were bad up until 1882. There were three herders at the ranch on the west side of the river, a man named Marguerito who was the witness' father's herder and another, Rumaldo Apodaca, and another, Francisco Mestas. Those three men were there and they used to visit them frequently and bring them provisions. Sometimes the witness came by himself and sometimes Don Rumaldo accompanied him. When he went to show the river he went from Alamitos down to the Tres Alamos bend on foot, about a mile distant from the bend that the river made, but he cannot tell what the distance is that he walked from Alamitos. They went to the present channel of the river and were following in the old channel of the river. He knew the old channel very well because the ruins are there where he first saw the river run, and he had no difficulty in finding the ruins of the river. Some times he was walking ahead and sometimes others of the men who went with him. They found the stakes where it had been surveyed and followed the stakes where they

were staked because the surveyor asked them if those were the places and he told him, yes, there is where the river used to run. This was not to please the surveyor, but he was simply giving him the information that he could. The river used to run in that direction it made a bend and a turn and a bend toward Tres Alamos toward the hills. When he saw the river running at those places was in 1856 and he had noticed it at those places several other times when he traveled along there. Before that date he had nothing to do with the river, but he knew it. All the time when he traveled there he noticed the river and paid attention to it. Being asked if he had ever been down upon the bank of the river before the other day half way between Alamitos and Tres Alamos, he answers, in the affirmative and that on several occasions the oxen got loose and he was looking for them. The oxen grazed down the bend between Alamitos and Tres Alamos. White's house was near to the river and the river came near the hills. The road was on the hills. The house was on the hills near the Muleros Ford. He knew that house since 1854. The house was there in 1852. He does not know who lived there in '52. It was called White's house. In 1853 he passed White's house several times as he came down to El Paso and he was on horseback and came to look after the cattle down there. (It is probable that there is here some misunderstanding as to the years.) They were cattle that his father had there and a gentleman by the name of Don Pablo. He traveled sometimes on horseback and when they went up to Mesilla or Las Cruces they traveled with carts. Being then asked, if it was in '53 that he took provisions down to the men who guarded the cattle, he says, that they had cattle there in '56 and from '56 up to '58. The Indians carried away the cattle and kept them. They followed the Indians as far as Soledad, but they kept the cattle and his father bought cattle afterwards. The following year he bought cattle and put them at the same place where the Indians had

stolen them. The Indians were always bad. The Indians took the cattle once in '56, only once, and then they used to herd the cattle in other directions and after '56 they were afraid to keep cattle anywhere. After '56 they abandoned that place for sometime. They took some oxen there after '56 but he does not remember how long afterwards. After 1856 they had oxen, cattle, cows, and mules sometimes. They had cattle there up to '58 or '59. With reference to Canutillo the river in '59 was all along the edge of the hills. He does not know how far from the hills, but the river used to run leaving anconas. The river ran straight. It did not run on bends. When the river overflowed it overflowed the country. The river went close to the edge of the hills and it made playas, but the water came to the edge of the hills. Most of the time it ran straight, but in some places it made bends, it made a bend from La Bruja down, a small bend. From there and up above where Anthony is now, it made another small bend and then it ran all along the hills downward. It did not follow the bend of the hills because it had a channel and did not follow those bends. In many places the river went to the edge of the hills. From Tres Alamos the place where the river used to run is where the railroad is now. The river made several small bends below Tres Alamos. He cannot say where the bends were as he traveled always by the road. In those days he does not know how far the road was to the east of the river, but it was quite far and in other places where there were hills it was near. Being asked, what was the greatest distance from the road to the river between Alamitos and White's Ranch, he says, that where Anthony is now was the longest distance, but he does not know how many miles, and then adds, this side of Anthony where the Pelillar is, is where the greatest distance was. He says, that he could see the river from the hills, and traveled the road on the hills sometimes, but when the river was dry there were places in those bends, those cut-offs, that they could follow

the road in the bottom. Between Alamitos and Tres Alamos in dry times they did not follow the bank of the river, but took the upper road on the hills. From the road where he could see the river between Alamitos and Tres Alamos, he does not know what the distance was at that time from the road to the river. They did not know what miles were nor what leagues were. Where the town of Anthony now is, the river when he first knew it, was very near the road, but he cannot tell the distance. Being asked, in Question 446, on which side of the railroad at Anthony was the old stage road, this side of Anthony, he says, it followed up on the hills and from Alamitos there was a road straight to where Anthony is now and when the river overflowed the river made a bend towards the hills. Where Anthony is now the river was very near to the road. There was a cut-off that came towards the Cienega de Pelillar that came below and made a bend there where Tres Alamos used to be. The road this side of Anthony was on the east side of where the railroad now is, but he does not know how far. In response to questions asked him if he found things this side of Alamitos, he answers, in the affirmative, that he found a farm, some houses, and a new barn, and several houses there and an alfalfa field and the river ran with reference to that new barn, very near to it. He does not know on which side, but right there where that barn is the river used to run there near. Following the old bed of the river they went on the west side of the house, about 10 or 15 yards. He cannot tell whether there was any difference from where the stakes were set. On pages 937 to 940, the cross-examination seems to elicit but little, if anything, of importance, but it finally appears that he walked from Alamitos to Tres Alamos and got in the wagon at Tres Alamos and he does not know what became of the automobile. They then went to La Bruja and they asked him if he knew that place and he told them that he did. It was a place that was called La Bruja. He does not know

why. It was in the valley at a bend over the hills as the hills made a bend. The road passed by there to the place called La Bruja, the height where La Bruja is. The Height of La Bruja is east of the railroad and very near to the railroad, but he cannot tell how far it is from the railroad to the Height of La Bruja. He found the La Bruja Heights last Sunday and says that he knew it for himself many years ago and nobody showed it to him now. He knows the place very well, but it is very different from the way it looked before the railroad and the paved wagon road went along there. He had no difficulty in finding the place. Being asked what particular thing caused him to remember it so well, he says, it is because in the year 1878 he was traveling that road and the Indians caught him there just where it makes the bend, but they set him free. There was an Indian among them whom he had known at the Lincoln Reservation and through the influence of that Indian they let him free. The Indian's name was Cirquitas and there were about forty Indians. In '78 the river ran right there against the hills. The river ran very near the Height of La Bruja. He then says, that in '78 he remembers La Bruja because the Indians caught him there, but the river was not there then. The Indians kept him about an hour and the river did not run there at that time. He does not know when the river ceased to run there. Up to '64 he went by there every year and he does not remember whether the river changed in '62 or '64, but it changed somewhere near that. He never saw anybody farming land between White's house and Alamitos between 1850 and 1860. If there had been anybody so farming he thinks he would have known it, but he did not know any farms there and did not see any. During those years everything was a desert. In '52 and '53 he saw travelers camped at White's house and he saw persons who lived there, but he did not know their names. In '52 and '53 he only passed by several times. He does not know whether they were surveyors living there or not.

Some people lived there. He does not remember seeing men surveying the river. He did not know anybody by the name of White, only the name of the house. After stopping at La Bruja the other day they merely passed by. They stopped there for a little while only, while they asked him if he knew the place. He got out of the wagon and walked right there to the place. The surveyor asked him where the river ran and he did not tell him how many yards from La Bruja Height, but simply showed him the place, pointed out the place, and then they came down towards here. They got out at a place they used to call Duraznito. He thinks that was not the first place they stopped this side of La Bruja, but they stopped at Sanguijuelas. They did not get out of the wagon there, they only stopped on the wagon and they asked him, if he knew the place and he said, yes. In the early days there was an estero there to the east side of where the railroad is. It was a round estero above Canutillo. They came from there to Canutillo in the wagon and they simply passed by. He showed where the river used to run as did everybody else. He does not know if all of the others knew where the river used to run. They got out of the wagon at Canutillo and walked along the railroad and the wagon went on the road. They walked about a mile, more or less. They did not stop anywhere, they were only showing around and then they got back into the wagon. This was quite far below Canutillo. After they got in the wagon they stopped where Duraznito used to be. He had never heard of it by the name of Duraznito, but used to hear it called Muleros. All around that place was called Muleros. In the early days he did not know a place called Montoya. He cannot tell how many beaver were at the beaver dam. He did not see the beavers himself, but he saw where they had been cutting trees and building dams. There were fresh signs of the beaver there then. He does not know how many there were. He never killed any of the beavers and he was about 14 or 14 or 16 years old when he saw

the signs of them. He was already grown some. Several times he went there with some of the herders and always saw fresh beaver signs. He saw large sized trees which had been cut down by the beaver. They cut them on the other side of the river to the west. There was a playa on the east side of the river. They cut the trees very near to the river. He does not know how they got them to the place at the dam as he never saw them doing it. At the beaver dam there were two branches, one which came this way to the east and the strongest current of the water ran towards the hills there. He was then asked, in Question 671, "What did the beaver build that dam at that place for?" To which question objection was made as the witness had not qualified as a naturalist, but he answers that he does not know, but Don Rumaldo told him that they built that there for the purpose of taking baths, bathing in the river. When he went up and down the valley on Sunday, the surveyor made the questions to him. He did not write down the answers. No one wrote down his answers when they were looking around. In the afternoon here where they slept at night they asked him questions. Mr. Reber asked questions. Mr. Reber and himself were together and this gentleman (indicating Mr. Baker) he took the testimony in writing on Sunday in the afternoon—it was already late, about sundown. It was at the house where they slept, where they stopped that night. There was no oath administered. He does not know what became of his written declaration. He did not sign it. It was taken in Spanish as he does not speak English. There was no interpreter. He gave his testimony in Spanish. The questions were made by that gentleman whose name he does not know (indicating Mr. Reber). On Sunday when he left Canutillo he came towards White's Ranch. They got off the wagon at a place the name of which he does not know, to go to a nearby place to ask him if that was the bank of the old river. The place formerly was called Muleros. All that neighborhood was

called Muleros. He does not know what the name is now. All that rinconada when he first knew it was called Muleros. Where they got off the wagon below Canutillo they gave it a name, but he does not remember it now. When he was a boy he knew all that place by the name of Muleros. Being asked if they took him to a place called Duraznito, he says, yes, there it was where they got off. As a boy he never heard of Duraznito and never saw a peach tree growing at that place. Mr. Van Patten did not at Duraznito show him the stump of a peach tree and they did not dig up a stump and tell him that was a peach tree. He remembered that spot because he traveled along there frequently. He crossed the river above at the ford called Muleros. A little higher up in the bosque there was another ford and they used to cross it on horseback. It was quite far from the hills. There was bosque only on the other side of the river at that ford. He does not know if the ford was opposite the place now called Duraznito or if it was above or below. He crossed that ford many times between 1856 and 1858. Sometimes going from Paso del Norte and sometimes coming down the road from Mesilla. The present river at the place they called Duraznito runs on the other side towards the west, but he does not know how far from the hills on the east side of the valley. He cannot see the river from Duraznito. He does not know where Montoya is. He never heard the name of Montoya, but knows where the railroad runs. North of Duraznito on Sunday he saw a new hotel or a new house, but he does not know whether it was a hotel or not. He could not know how far was the river from that hotel and he does not know whether it was a hotel or not. He was only paying attention to where the old river used to run. He saw many houses around there and when he first knew those places it was desert. He is 70 years old and was born in '44 and baptized at Juarez by Ramon Ortiz. He has his baptismal certificate at home. It is quite a number of years since he got it. He came to

Juarez and took it himself out of the register. The priest who lived there copied it. When he passed Duraznito on Sunday they were on the wagon and they only got off there. He did locate the river from Duraznito down to White's house because he knew it and was following the direction and he was showing them where it used to run. He is then asked in Question 758, "You were riding in the wagon and pointing to the west and saying, down yonder is where the river used to run?" To which he answers, "All those places the river ran". Between Duraznito and White's Ranch they got out of the wagon at the Cuesta in order to examine the old road. (The interpreter tells the counsel for Texas that cuesta is a steep hill.) At the Cuesta that road is very near the new paved road, to the east of it. He does not know what the distance was that they went on that old road on Sunday, but they went along the road. In many places the new road is where the old river used to run. In many points, in many places of that rinconada. The first rinconada begins at Tres Alamos and there are many rinconadas below Tres Alamos. The present wagon road is also where the old river used to run. He did not know the particular names of the places or the spots. The old river ran where the present road is, at La Bruja, Las Sanguijuelas, Tres Alamos, those are what he calls rinconadas. The present wagon road runs to the east of the Santa Fe railroad. At pages 955 and 956 he is questioned a good deal about the so-called hotel and other houses and farms and fields, but this does not seem to lead to anything as there never was any other evidence given about these things concerning which he was asked at this time. Being asked in Question 803 if he found anything there that he took to be the river of '50 or '52, he says, the banks of the river are there to indicate where the river ran and he found the banks on Sunday. They are damaged. He did not find them where the fields are below the bridge. It is all filled up, but below the bridge

is where the old marks of the river are. In the olden days at some places the river was wide and at some places it was narrow. He remembers that particular place because he traveled extensively along those rinconos frequently on horseback. He used to see the river full from hill to hill, but he does not remember the year, the first year when he saw such a flood. In '62 he saw some very large floods. There had been a number of them before '62. Most of the years during the month of May, on the 15th of May, large floods came. When the floods came they could not travel except on the hills. The valley used to be filled with water. Being asked if the current would cut new channels in those floods, in Question 816, he says, there were some arroyos that were created by the river, but he did not see any changes at that time. When the river came down it used to take its natural channel. In the floods, the river covered the valley. Quite a number of little islands were left which were uncovered by the water. He traveled the hill road on both sides of the river. He cannot tell what the distance was at the furthest place on the old stage road from where the railroad now is. Being then in Question 825 asked, "What was the furthest distance of the old wagon road from the river?" He says, the largest rinconada that there was, was called Los Alamitos, but he declares he cannot tell the distance in miles or in leagues, but he can say that it was the longest distance. It was this side of Alamitos and it used to be called La Cienega de Pelillar where the river is now and the river made a big bend toward where La Union now is and went near to La Union. He never heard of the Island of Jose Maria Garcia at that time. When they got to White's Ranch in the wagon they got off of the wagon and stopped there for a little while and they asked him where the house was and he said, here it is. He only saw the rocks of the house. You can see where the old house used to be. He did not pay any attention as to which side of the railroad was the old house. He only

looked at the ruins of the house. They stopped there for a little while only and he showed them the ruins of the old house. The rocks of the house are east from the road—very near the present wagon road. Those ruins are very near to the old river. He told them where the old river used to run and pointed to them where the Piedras de Amolar were where the river used to run. He did not point them to the Piedras Paradas. He does not remember when the river ran by Piedras Paradas. It runs there now but not before. He does not remember when it first went there. Being asked in Question 859 what direction is Old Canutillo from Alamitos, he says, he does not know where the directions are from here, but it comes from the north along the current of the river. He does not know if it is north or south, but it comes right along the current of the river and the river used to come down. When he finished showing the old ruins at White's Ranch and the river at Piedras de Amolar they came down here to the house where they stopped all night. The next day they went across the river. He went to Piedras Paradas on Monday with Eugene Van Patten, Mr. Austin, Jose Martinez, Seferino Gallegos, Sixto Garcia, and a man named Felipe. They asked him if he knew the road in former days, if he knew Santa Teresa, Corral de Tapia, and Corral de Trosas, and Alto de los Cuarones, and he said, yes. They asked him if he had seen the river run at those places in the early days and he said, no, from the year '52 to the year '58. In Question 876 he is asked if they mentioned those years or if he did, and he says, that he mentioned them to them. They asked him if the river used to run there at that time and he said, no. At Piedras Paradas he told them the road ran inside of the bosque and at Corral de Tapia also inside the bosque, and at Santa Teresa they used to go into the bosque. At Los Cuarones he told them the road was on the hills. He does not know why it ran there but the road took a part of the hills at that place. There were only two roads

on that side of the valley and they came together up above the other side of Corral de Trosas where it leads to Amoles. He is then asked where the road crossed the Estero de Frijol, and he says, he does not remember the names, but he remembers a long estero where he watered the oxen. The road was very near the estero. That estero was an arroyo which came along there, but had some water sometimes. The road that ran through the valley crossed the estero that he mentioned yesterday. They used to go in that direction (indicating northwesterly) to Amoles. When the arroyo had water in it the road went by the hills. The road that went by the hills joined this road below and they took that direction to go to Amoles. At Corral de Trosas they used to go to the height and went in that direction and then came in this direction to join the road that was down in the bosque. The hill road went to the west of Corral de Trosas. He never heard the name mentioned of Bosque del Gato, nor La Cobrena. He knew the Cuesta Arena, a place called Cuesta de Arena. It was a sandy place and the Cuesta de Arena went to the road and led to the bosque road. In Question 904, he is asked, "Which way is that Corral de Trosas, was it towards Amoles?" This question does not seem intelligible nor is the answer which is, "No, sir. It is somewhere in this other direction as you go down the road." The Corral de Trosas was a stopping place and sometimes the water ran by that stopping place and sometimes the water was stagnant there. When there was water sometimes they stopped there, but they took a distant road because the arroyo there was very muddy. He did not know the ranch of Juan Sais. On Monday he went to a place near what was called Yerba del Manso. He went above Corral de Tapia traveling in a wagon. At some places they got off the wagon. At noon they stopped the other side of Corral de Tapia and from that place they came back. The present river is next to the Corral de Tapia. He does not know at what distance the river

runs from Piedras Paradas. In the wagon on Monday the road ran to the west of Piedras Paradas. They stopped there very near it to drink water. From the foot of the Piedras Paradas the present bank of the river is next to them. The rocks are a part of the bank of the river. The river flows against those rocks. The early valley road was quite far from the rocks. The road was inside. When there was water in the anconas the road went by the edge of the hills and the road ran to the west of the rocks. He did not find that old road the other day. At the Corral de Tapia he does not know how far apart was the valley road from the hill road, but it was not a great distance. They went to Santa Teresa by the bosque road and they went through and the road came down again and took the bosque. He said there were two roads until they got above Corral de Trosas. When the arroyos had water then they went up from Santa Teresa and took the upper road which ran over the hills at Alto de los Cuarones. The road that ran over the hills came down at Santa Teresa. No one lived at Santa Teresa at that time. He never saw anyone living there. There were no houses there. He knows when the Texans first came in '62. When he came to redeem some oxen that had been pawned at Mesilla, which oxen had been grazing at Muleros. The Texans took those oxen and part of them were left by them and they took some of Mr. Barela's oxen, too. They were taken from the west side of the river. The Texans went across. Being asked, if he remembers the battle of Mesilla, in Question 955, he asks, "When Mr. Lemon was killed?" And being told probably so, he says he remembers it. Mr. Lemon was the county judge there. It was a political fight. He was then told that counsel was inquiring about the Texans' fight with the United States soldiers and he says, he remembers about that, but at that time he was not living at Mesilla. He had already left for El Paso. He does not know where the

battle took place. It was in '62. He refers to the Mesilla battle, and the battle of Valverde was fought first. He knows where the San Agustin Pass is. He has traveled that road many times. He has traveled it lately. He does not know how it was discovered that he was a witness in this case. Mr. Van Patten and this gentleman here (indicating Mr. Reber) went for him and found him at Alamogordo on Thursday or Friday of last week and he came back with them and these other witnesses came back with them. He came on the train to El Paso and got here Friday. He did nothing on Saturday and went out on Sunday. They started Saturday afternoon to that place called Anthony and spent the night there. He is a farmer and is a land owner. He does not live at Tularosa but at La Luz Canon, north of Alamogordo. To Tularosa he came from Mesilla and went by the San Agustin Pass in 1864 when he was 20 years old. His father was dead then at Mesilla. In 1861 he lived at Mesilla. He heard the name of John Baylor and that was all. He did not hear the name of Major Lynd. He does not remember of hearing of the surrender of an army at San Agustin Pass. He knows where San Agustin spring is. He does not know who lives there now, but some time ago Mr. Shedd lived there. He knows Mr. W. W. Cox, but he does not know if he lives there. In going through that Pass there is a little town called Loma de la Cruz, a mining town. He remembers the Ojo de Alamo. At that time there were no houses. There are some houses now. When he moved across there were no houses on this side of the Pass. There were no houses to the west side of the Pass and on the east side only at San Agustin. When he went across the road passed by the white sands. It was next to the white sands. These gentlemen did not go to his home, but met him at Alamogordo. He does not think they knew he would be there. Faustino Acuna told them there that they were needed. That was the first time he knew of it. He and Faustino

and Sixto Garcia went to see Mr. Van Patten and Van Patten told him that he had to come to El Paso to testify in this case. The witness did not propose coming, but he thought that as Mr. Van Patten had been a sheriff he might have power to say so and he agreed right away to come. If he had not believed that Van Patten had that power he would have gone back home to attend to his business. Van Patten told him he must come and to leave his conveyance at a corral and get ready. He did not leave his conveyance in town as his son-in-law was with him and he sent it back with his son-in-law. He did not know when he came how long he would be kept. Here they told him that they would pay his expenses and from Alamogordo to this place they paid for his transportation. He would leave when he was discharged by the court as he thinks he is here before the court giving his testimony. On the road Van Patten asked him if he knew these places and he told him, yes. He did not mention all these places before the witness had gotten to the river. He asked the witness if he knew the places and he told him that he knew them. He asked him if he knew Duraznito and he told him that he did not and he told him he had never seen a peach tree at Duraznito. Van Patten did not tell him about Canutillo Viejo, nor that in the early '50s there was a house there, nor anything about a man named Salado. The witness never saw any houses in those early years at Old Canutillo. After the '60s there was a house there. He does not know when they dug an acequia from some place above Alamitos down towards where Anthony now is. He does not remember it if he saw it. He traveled very little at that time. From '78 up he used to travel very little. Prior to '78 he does not remember if there was any ditch there. He remembers that he saw at Alamitos a few little houses, but he does not remember when he saw them. He does not remember the date at all, but he thinks it was in the year '68 when he passed by there.

He thinks there were not any houses there prior to that time, but he does not know. He does not remember ever having seen a spring along that road. He did not see anybody cultivating land in those early days or about the '50s on the east side of the river. He never heard anything about surveying in '51 and '52 and '53 above White's Ranch and he never heard of American surveyors living at White's Ranch during several months in those years. After he had lived at Mesilla, he did not go back to Paso del Norte to make it his permanent residence, but he used to go there to attend to his father's business. Most of the time his father kept him at Mesilla. He did come to Paso del Norte to live at one time for as much as eight months. It was between '56 and '57, maybe. He traveled up and down the river sometimes in the winter and sometimes in the summer, but he cannot exactly say the date. He remembers two families at Los Amoles when he was a boy,—the Enriquez family and the family of Leon Alvarez. There were several families there but he does not remember who they were. He does not remember what year it was when he first saw them living there. Amoles was at that time a little town already and had already farms near it. They had a ditch there but he never knew where the ditch came from the river. When he passed the ditch it was over a bridge and he does not know whether it was straight or crooked. It was of no importance to him whether it was straight or crooked, nor whether the river ran straight or crooked. He does not know how large the bosque was on the east side of the river at Alamitos. It was quite large. It had willow trees and cottonwood trees. The wagon road was not very far from Alamitos, but he does not know the distance. He does not know which was the stage road, but it seems to him it was the same road. Being asked, if the road went from here to Fort Fillmore, he says he does not know where Fort Fillmore was, but it went to Las Cruces. He does not know what the stage

was, being asked if after '57 he saw stages passing over that road, but he used to see some mail coaches that were drawn by mules. He is asked where they crossed the river and he says, he did not see them cross the river, but sometimes when he was traveling on the road he met them. He does not know where these stages went, whether they went to Mesilla or not. The coming of a stage coach in the country was a matter of no importance to him. He does not read or speak English. He has lived in New Mexico the most of his life and has voted in the elections and his testimony is being given now through an interpreter. They are paying him two dollars a day and his board.

On re-direct examination he says that when he went up the river last Sunday or Monday he did not go to Amoles. And being asked, in Question 1110, if he showed the river to the others and to the surveyor, or if Mr. Van Patten showed the river-bed to him, he answers, "I showed it to him." When he was showing the river and saw some stakes he showed the river according to his own recollection. He says that La Union is on the east side of the river below Alamitos a short distance. He does not know the place called Anthony, and being told that Anthony is the town a little south of Alamitos and asked if La Union is anywhere near, where Anthony now is, he says that he knew formerly La Union on the other side (pointing westward). He does not know what place they now call La Union. He is then asked if he intended to testify this morning about La Union, and he says, that he thought La Union was the town this side of Alamitos. He does not know what the name of it is. He is asked whether the estero he had testified about near Corral de Trosas was an estero or merely an arroyo, and he says, that it was an estero; that it had water in it and most of the time when he stopped there it had water in it, a good deal of water. He saw ruins of

houses at the place called Santa Teresa. He does not remember seeing any spring between White's Ranch and Alamitos, near the river. On Sunday or Monday when he went to the place called Duraznito, he found an old river-bed where he had known the river to run when he was a boy. It was near to the wagon road and to the railroad.

We now come to the testimony of

SIXTO GARCIA

which begins on page 975.

He says he lives in the Canon de La Luz in Otero County, and has lived there thirty years. Before he went there he lived in Dona Ana County, first at Picacho and afterwards at Dona Ana. He was born in Socorro, New Mexico, and is 72 years old. He left Socorro in 1853 and came to Mesilla. He was then about 11 years old and came with his father. He remained at Mesilla until 1858. When he first came to Mesilla it was in Mexico and he remembers the raising of the flag in Mesilla in 1854. In 1858 he went to live at Picacho and lived there until 1872 and then went to Dona Ana to live. While he lived at Mesilla, he did not come down to Paso del Norte, but in the same year that he went to Picacho he came here and traveled on the east side of the river, remaining at Paso del Norte three days. He came with a little brother of his. After that he traveled up and down the river on the other side, but not on the east side. On that first trip he went back on the other side of the river. Later than that he traveled on the east side of the river sometimes. Various places he did not know, but the river, yes. By name he did not know the places. Alamitos was a place where there were cottonwood trees and was the first place they used to strike the river. He saw that on his first trip when he came to Paso del Norte. There was a house there. The travelers made use of the place as a stopping place. Th

river was right adjacent to the trees. He has recently re-visited that place and he recognized it as the place he had known as Alamitos. There is a cottonwood tree there now. He is then shown plaintiff's Exhibit No. 7, and says, that it may be the same place, but he cannot tell definitely from the picture. It looks like the cottonwood tree that is there now which seems to be quite old. The ladera which slopes up to the eastward was very near to the place called Alamitos. From Alamitos the road started down to the edge of the hills. From Alamitos the river ran toward the south. A little distance below it formed a bend toward the west and turned back toward the east and came very near to the road right against the hills. From that point below he did not follow the river, but it looked rather straight. He did not know a place called La Bruja. Being asked, if he was acquainted with the Estero de las Sanguijuelas, he says, that he knew an estero but he does not know what name was given to it. He has lately seen the place they call Canutillo, and the estero was below the new town called Canutillo and it was a long estero. When he was there a few days ago he saw the bridge near Canutillo and when he first knew the river it was near where that bridge is and it seems to him that it was right there where the bridge is. When he passed now he came to know which was Canutillo Viejo. Formerly he did not, but he remembers that he passed by there at night and did not see whether anybody lived there or not. He did not know Duraznito by name. When he was recently up the river, he saw the place that others said was Duraznito and he remembers seeing that place when he was young, but he passed there at night and did not see the river. Opposite that place the road was on the hills. He has learned now that a place was called White's Ranch. The house was on a height and the river passed below on the west side, near the house. At that time he never heard the rocks metinoned called the Piedra de Amolar. The

road which he traveled from Alamitos down was on the east side of the river and was over the hills all the time. When he was there a few days ago, he saw that old road at some places. Traveling along that road when he was young, at some places he could see the river and at other places the trees were so tall that you could not see twenty-five yards ahead. Between Alamitos and White's Ranch the river ran near the hills. When he recently visited that place others pointed out to him the place called La Bruja. On the west side of the river he knew the Piedras Paradas and when he first knew that place, the river was east from those rocks and he did not see the river, the bosque was very tall. The road ran quite a distance from the Piedras Paradas on the east side. On top of the hills back of the Piedras Paradas you could see the river, but he never went up there. He knew the Corral de Tapia which was towards the north from the Piedras Paradas. He could not see the river from the Corral de Tapia because the bosque was very tall and the road ran through the bosque. The Corral de Tapia was west of the road. He never heard the place called Alamo Naranjo mentioned. He knew a hill called Alto de los Cuarones which was north from Corral de Tapia, and he knew a place called the Corral de Trosas which was south from the hill of Cuarones. Being asked if he could see the river from the Corral de Trosas in question 105, he answers, "You could not see it from any place along there." He knew the old town of Amoles and he could not see the river from that place. When he first knew it there were not many people living there. On the east of Amoles there was a good deal of bosque and on the west tornillo. The farms were toward the bosque and he did not see the cultivated land, and he did not see where the people at Amoles got their water. He did see an acequia there which went right through the town and he thinks it was used to irrigate. He did not see the lands which were irrigated from that

acequia. He does not know where the acequia came out of the river. On the east side of the river he knew only one road. At Amoles the bosque to the east of the town was right against the town. The road on the east side of the river ran along the hills because the water used to flow close to the hills so that there could be no road there. When the river was not high there were some small places where the road used to go down. There were two that he remembers, very small. He did not know a place which they called the Salitre, but there were salitres everywhere, in all the places. He has been a deputy sheriff and a county commissioner. When he first knew Mesilla it was on the west side of the river and it is now on the east side. He remembers when the river changed so as to put Mesilla on the east side. It started in 1862 and finished in 1864. He was then living at Picacho. In 1862 a part of the river got into a ditch near the hills and the water kept running there and finally moved it. It was a very large flood and that of 1862 was larger than that of 1864. La Mesa and the towns below La Mesa were destroyed by the flood. He does not know whether Santo Tomas was destroyed or not. The old town of Amoles was destroyed and after it was destroyed the river remained running on the east side. He has recently seen the river on the west side of the valley. The river destroyed Corral de Tapia and it remained in the river as it runs now. He does not know when the river ran in there. He does not know when the river changed to the west side of the valley at that place, but in front of Mesilla it changed over from '62 to '64. After that change, being asked how near to the west side of the valley the river ran, he says he did not see it and he has not been there since.

On cross-examination he again says that he was born at Socorro and in 1842 and lived there about 11 years and then moved to Mesilla where he lived about three

years, and then went to Picacho in 1855 or 1856 and lived there until 1872. He was living at Picacho when he first came down to Paso del Norte and that was in 1858. That first trip was made part during the day and part during the night. He did not know the names of the places then, but from the certain height where the river struck the hills they stopped for supper and from there started at night towards Paso del Norte on the east side of the river. It was at Alamitos where they camped. He knows the name of the place now, but he did not know it before. There seems to be some confusion or misunderstanding here, because in Question 164 he is told that he stopped at Alamitos for supper and after dark moved on down towards Paso del Norte, to which he answers in the negative and says that he had cooked his supper ahead of that for at Alamitos he stopped for breakfast and came down the river. He slept that night this side of the house which may mean White's house, and he says there was a ruined house there at a place very near the hills as you have to go up the road. He saw the place called Canutillo as he passed by there, but he did not know that it was Canutillo. He traveled a road and he does not know whether it was an old road or a new road. It was on the hills. He traveled in the night time on account of the Indians being bad. He first traveled on the west side of the valley when he returned in 1858. He saw a place where there were rocks called Piedras Paradas. He did not camp there, but just passed by. He camped at Corral de Trosas where there was a large tank. There was water there but it did not run. It might be an estero and he could not tell whether it was a river-bed or not. It was a large place. It was from the north to the south. being asked if it reached up to Amoles, he says, no, the arroyo was there. The road went by and he never saw that arroyo any more. The road went on the edge of the bosque and he never traveled on the hills.

He knew a place called the Alto de los Cuarones ahead of Corral de Trosas. The road went over that place. In 1858 at no place from any of those points on the west side did he see the river. He passed there on the west side the last time in 1862 and the river could not be seen. All of the valley was filled with water from hill to hill. Amoles in 1862 was a little town, but he did not know the people who lived there. He heard of Simon Enriquez who lived there. He thinks the water went into Amoles in 1862, and when he traveled he took the road on the edge of the hills. It was not the regular road. There were some wagon tracks on the edge of the hills. In '62 is the only time he went by there from that time on he never went there any more. He does not know if there was any farming at Amoles in '62. He did not see it. He did not see anything like an irrigation ditch. He traveled away up and could not see anything like that. He had been at Amoles before that time, in the year '56, and there was a ditch along the side of the little town of Amoles, but he never followed the ditch to its source and never saw where it came from the river, nor where the ditch ended. He knew an estero below Amoles called the Frijol. It was quite long. There was a lot of monte of tornillo brush on both sides of it. He did not know the Island of Jose Maria Garcia. He has lived at La Luz about 30 years. A few days ago he visited the valley, and sometime last week on Sunday and Monday in company with others, about four Americans and four Mexicans. Outside of himself, four more Mexicans. Duran was there and he has known Duran since 1884. He does not know how old he is. He became a witness in this case because Eugene Van Patten called him. He has known him since before the year '58 in Dona Ana County. He knew him but did not know what his business was .and never was very much acquainted with him. Van Patten found him at Alamogordo and he told him he must come as a wit-

ness. Being asked, if he was deputy sheriff at one time, he says he was constable, not a deputy sheriff; and it appears here that the interpreter had translated the word "soto-alguacil" as "deputy sheriff", but the word really means "constable"; and the witness says he never was a deputy sheriff but he has been a county commissioner. He does not speak English and is giving his testimony through an interpreter. Being asked, in Question 248, if he felt that he must obey Don Eugenio when he told him to come, he answers that he does not think that he has to obey him; and in answer to the next question, he says, that he came at his invitation and if he had invited him to go anywhere else he would have gone on account of the friendship they have, and further that he would do him any friendly service he could without the need of any reward for it, but not in anything that was not right nor straight. If Van Patten said the thing was right and he was satisfied that it was right, then he would assist him. Being then asked in Question 255, if Van Patten said this was right, he answers, that he did not say that to him, what he is telling now is what he knows in regard to the matter. Van Patten asked him if he knew the river but not about any particular year, and he did not say anything to him about not knowing the river until 1858 and only told him that he knew the river. The witness says he did not have an idea as to what he was to be questioned about and nothing of the kind was mentioned. When he got upon the ground he heard what the purpose was and Van Patten asked him if he could give a description of the currents of the river and he told him that he could. He says he gave the description as far as he knew, but this is the first time he is giving a description of the river here in this court. After he saw the river on Sunday and Monday he made a declaration before a lawyer and he thinks that Mr. Reber is the gentleman. Mr. Chaves only was present and a young lady did the writing on

Tuesday or Wednesday. At Alamitos there was quite a number of cottonwoods. There is only one now. Being asked how large was the bosque at Alamitos on the east side, he says it was not a bosque, it was very small. There were some tornillo trees there. He does not know when the river left that place. In '78, the river did not run there, but he does not know where it ran. Between '64 and '78 he never was at the places. From '58 up to '64 he did not see the river because he traveled on the other side and he could not possibly see the river on account of the bosque. He used to travel on the other side and from that road he could not see the river at all. In '58 he did not see anybody on the east side of the valley. When he left Alamitos the other day they came down the river. He knew several places this side of Alamitos. There was a little town they told him was called New Canutillo and some other little towns along the road. From Alamitos they came in some places on foot and in other places in the wagon. He showed them the old river and the places where he knew them to be. Sometimes from the wagon and sometimes not. There was no difficulty in showing the river from the wagon where it used to strike the hills. When he walked on foot he did not have any difficulty in finding the river-bed. He found it by the signs that he himself knew, not by what he heard. Natural reason would show him that at places it was very high and the river could not ever run in that direction. There were natural signs and he knew the river by the signs. Indications are signs to him and signs for him are indications. He saw some stakes in the river-bed and at some places they followed those stakes and at other places they looked where the river used to run before. They did not follow the stakes, they saw them from where they were. The stakes were at the edge and they followed the bed, the old channel of the river, from Alamitos down the river, for a very short distance but below the place now called Anthony.

They came through an alfalfa field and by farm houses which were on the other side and no houses on this side. The current they were following was east of the houses which are between Alamitos and Anthony, but the houses were very near the channel of the river. At the place which they told him was La Bruja, from the wagon he told them where he had seen the river run. He remembered that the road was above there, but he only knew the place lately by the name of La Bruja. In the early years he did not see that place in the daytime. He saw the river striking the hills in the daytime in two places and he passed during the daytime in '58, and the river struck the hills in two places, at Alamitos and at the place they now call New Canutillo, and at another place they call Tres Alamos. He was coming to Paso del Norte. Night overtook him at that place they call Canutillo Nuevo and he kept traveling on. He did not show them the river after he got in the wagon at any place this side of La Bruja. Between Tres Alamos and New Canutillo in '58, the river ran straight. Tres Alamos from La Bruja is from north to south, but he does not know how far Tres Alamos was from La Bruja. If he knows the place now called Vinton, he never knew the name. He saw some brick yards. Tres Alamos is to the north from those brick yards, but how far he does not know. From where the brick kilns are now down to New Canutillo part of the distance the river ran straight and part went inside. From Canutillo Nuevo it ran straight a little distance and all around that locality he could not see the river as the bosque prevented him from seeing it. The tornillo was thick and very few trees and that prevented seeing the river from the road. He does not know how large a bend that was. The other day when he was showing the river after passing New Canutillo he was on the wagon and they all went in the wagon. Some went all along the track, others in the wagon. Being asked if they followed the old river-bed, he says, no one

went there and they came down in the wagon here to a height which was ahead of White's Ranch. Some got off the wagon looking for places and some said that they knew the place called Duraznito and they got off to show where it was. He remained in the wagon and others also, a man named Felipe, Jose, Seferino, Jose Martinez, and Seferino Gallegos. Victoriano went to show the river. He lives at La Luz Canon. Some of those men were from Tularosa Canon. They then came down to White's house and passed by there and did not stop. They came to a place called Piedra de Amolar. There is a house there and they stayed there all night. The next day they crossed the river and they went to see if they could remember the Piedras Paradas and they found them. They did not need to look for the river over there as the river was there at Piedras Paradas. They were not looking for the old river. They never saw the old river at this place that they were looking for. It was no trouble to find the Piedras Paradas. They were very plain to view. They went to Corral de Trosas and Corral de Tapia to find out where those places were before they were destroyed by the river, to find out whether they knew the places before they were destroyed by the river. He does not know when they were destroyed by the river. The river could have destroyed them. The river destroyed everything as it rises. The river destroyed them enough but they could recognize all those places that they had known before. Corral de Tapia was at the edge of the valley towards the east side, (evidently meaning the east side of the hill). He first knew Corral de Tapia and Corral de Trosas by those names in '62. In '62 the water covered the whole valley from one end to the other. It was all full of water and he could not locate the channel of the river, there was no channel, and that was the largest flood he knew at that time. After '62 he never saw the river with reference to Corral de Trosas as he never

traveled there any more. He traveled on the east side in '78, but between '58 and '78 he never traveled on the east side. In '78 the river was not at Alamitos, and it was not at La Bruja. In '78 he could see the channel of the river from the road that was on the hill as it was already opened and the river had destroyed all the undergrowth there. In '78 at Tres Alamos the river could be seen inside, but he cannot calculate the distance. It might have been a mile, or two or three miles. He could not tell. In 1878 where New Canutillo is now the river was near. There was no bosque between him and the river at that time. Everything was clean then. Being asked in Question 402, if there ever was any bosque at any time between the river and the east side, he says, there was from New Canutillo towards the south, always tornillo, only tornillo in the river. Above New Canutillo in '78 there was not a bosque on the east side at any place. At that time he saw the river very far inside of the bosque. To the south of New Canutillo in '78 there was no bosque on the east side. There were tornillo thickets and the current of the river, he does not know where it was. He could not say whether there was any bosque or not because he could not see the current of the river, but he says that he did not see any. He never knew where the river ran south of New Canutillo. He never saw it, he never was there where it ran. He went inside the bosque. Between Alamitos and Tres Alamos in the early days it made a bend towards the east. It ran straight for a little distance as the river always runs. It ran to the south all the time, but for a short distance it ran straight. This side of Alamitos it bent towards the west and sometimes towards the east. It run towards the west from Alamitos a short distance down. It came back to the hills at Tres Alamos. Lately he heard it called Tres Alamos. Until the other day he did not know the names of those places. All of the men who were with him said that it was called Tres

Alamos. Being asked in Question 421, if they said that the river used to run there, he says, that he saw the river himself run there, he was not told by them. They showed him the place called La Bruja. From Tres Alamos to La Bruja it ran down stream. Below it made a short bend. He was able to recognize the place now called New Canutillo because the river struck there and it strikes there now at this time, but he cannot tell whether it has been there all the time since he first knew it, but he knows it was there then and is there now. It was there in 1858 and in 1878. It was a little inside of the bosque and it is there now. He says he cannot say that it has been there in the same place. He saw it there in 1878, a little inside of the bosque; there in the same place, a little short distance away. In 1878 it was not where it is now, it was a little more inside of the bosque. In 1878 he saw it was west of where it is now. He did not see it then over on the west side of the valley by Corral de Trosas. He did not know where the beaver dam was. When he reached New Canutillo the other day he saw some stakes in the valley. The men showing the valley did not follow the stakes. They did not stop at New Canutillo, they only passed by. From La Bruja down to White's Ranch they stopped at no place. The wagon kept on traveling on the new road. There was a railroad between them and the river all the way down, except in that part of the road that bent from Alamitos, in that part to come to Tres Alamos it was not that way. From where they were traveling the railroad was to the east, from Alamitos to Tres Alamos. The railroad was not east of the main road. They were not following there the main road, but were traveling along the valley following no road. In 1858 in most of the places the old stage road was to the east of where the railroad now is. Between Alamitos and Tres Alamos, the old road might be where the railroad track is now. The other parts of the road were outside of

where the railroad is now. At Tres Alamos the present river runs far inside the bosque. He could not see it. It is very far to the west. At La Bruja the present river runs near it. At the place they now call Vinton the present river runs inside of the bosque; he does not know where, he could not see it. At Old Canutillo the river runs inside of the bosque, but if it could be seen he could not see it, because he did not pay any attention to it. Old Canutillo is next to Canutillo Nuevo. He recognized the place at New Canutillo because at the edge where the river struck there was a large, long, low place and from that place the road went up to the hills. There is a little town there now and there is a bridge next to it, and he followed the road and did not pay any attention to the town. Some got off the wagon and went to the bridge. He did not do so. A boy, the owner of the wagon, was driving it, and the same wagon went on the west side the next day, when they went nearly as far as Corral de Trosas. The river was running near to those places. The river is now a little inside the bosque at Corral de Trosas, but he cannot tell the distance, but it can be seen now from Corral de Trosas. He did not go to the Alto de los Cuarones.

Upon re-cross examination, he says that the place on the west side of the valley called Frijol was an estero formed by the current of the water.

We now come to the evidence of the witness

JESUS ARVIZU

which begins on page 1004.

This witness lives in Las Cruces and has lived there since 1905. He lived at La Mesa before and went from Mesilla to La Mesa in 1863 and he came to Mesilla to live at the end of 1853. He says, the present condition of his health is not good. He was born in the

State of Sonora at a place called Frontera, on July 23, 1840, and he lived there one year. When his mother, his grandfather and his grandmother went to Corralitos to visit his aunt Isabel Luna they did not go back to Frontera because the Indians exterminated the village after they had gone to Corralitos. His father's name was Jaime Arvizu. The Indians killed him at Pilares in Sonora. His mother lived at Corralitos until they came to Mesilla in 1853. They went to Mesilla because he had a relative there, Jim Lucas, who was married to a cousin of his. In going to Mesilla he traveled on the west side of the river. The only place he remembers is Piedras Paradas. He did not afterwards become acquainted with other places on that side of the river, because he did not travel that way again until 1898, when his brother died at El Paso and the river was full of water. He did not stop at Piedras Paradas. They were taking them by freight. Jim Lucas sent a wagon to Corralitos to bring them. He got off the wagon there as a matter of curiosity to see those rocks. He did not notice if he could see the river at that place. The road at some places was on the hills and at others through the valley. They slept at Amoles. Jose Maria Garcia and Simon Enriquez and quite a number of families lived there. When they stopped at Amoles he could not see the river from that place. He has seen the Piedras Paradas recently and they look to him smaller than when he first knew them. After he reached Mesilla he made a trip to Paso del Norte in 1855, and made several trips. His mother had got married at Corralitos to Antonio Bernal and he died and it was then when Jim Lucas learned that his mother had become a widow that he sent for them and his mother received an inheritance of ten acres of land at Chamisal, which is here between the two bridges. An old man by the name of Cordova was the executor and when his mother came they delivered to her the possession of the land. The first trip

he made was to receive the rent of the land. It was rented two-thirds for the man who cultivated it and one-third for himself of the crops. He came down to receive his share in the latter part of September. He went down in September to receive his share of the crops until the river destroyed the land and it remained in Texas. He does not know what year the river destroyed the land, but it was the year that the dam was destroyed here. He does not remember if that was the same year that the river changed from the east side of Mesilla to the west side, but he thinks so. In coming to Paso del Norte and return he traveled on the east side of the river. He used to come down on other occasions to the feasts on the 12th of December. He traveled sometimes on horseback and sometimes in a wagon and he went along the road and some of the names that he hears now, he did not know then. The river had three or four bends to the east. He did become acquainted with a place called Alamitos. He first knew that place in 1855. The river was there. Some cottonwood trees were there and one of them is there yet. The tree that is there now is about 14 feet to the bank of the river. He has recently visited that place and he measured from the old bank to the tree, fourteen feet. The river does not run there now. From Alamitos the river formed a bend in front of Miller's store. He does not know whose store it is now. The first small bend was near Alamitos, but he does not know just how far it was; and there was another bend which terminated at Tres Alamos, but he cannot say how far it was to where that bend began. From the station and stores it may be three or four hundred yards that the bend turns to Tres Alamos. At Tres Alamos the river came exactly to where the railroad track now is and right there is a portion of the old bed of the river on the east side of the old railroad track. Frem Tres Alamos the river formed another bend which was not large nor small. At that time there were

no houses there, but he knows the place where there was the house of Gualdarama, afterwards. It was on a hill because the river was flowing below. In front of that place of Gualdarama the river ran right where the track is now. In those years he did not know a place called La Bruja. From Gualdarama's the river formed a bend to Vinton, and he has been told that is the place which was called La Bruja. Close to the hills, this side of Vinton, there is an obstruction and there the river turns to the west and then it had another bend and came down close to the hills again and came to the east to the hills. He never knew an estero called the Estero de las Sanguijuelas. He knows now a place by the name of Canutillo Nuevo, and the river ran there right where it is running now. He knew the river at that point. From Canutillo Nuevo the river had another bend to the east side. The bend comes from Canutillo Nuevo to Canutillo Viejo as he knew it and the track is through the center of the channel of the old river. When he first knew Old Canutillo, if anyone lived there, he does not remember, and he does not remember seeing any houses there. Being asked, if he ever saw any estero above New Canutillo when he was young, he says that at that time the river was there above Canutillo Nuevo. From Canutillo Nuevo they went over the hills and the hills were close to the river at that place. At Canutillo Viejo, when he first knew the river, it was at the point of the hills. He stopped there at one time when he was on horseback to give water and he got water from the river at that point. That was on the first trip he made to El Paso and he knew there was a watering place there, because he was told so when he left Mesilla. He became very well acquainted with the place called White's Ranch. He does not remember if there was anyone living there when he first knew that place. At White's Ranch the house was right close to the bank. The road was between the house and the river and the house was on a hill.

From Canutillo Viejo down to White's Ranch the general course of the river was straight. It had a little bend only where, at a place now called Montoya, there is a saloon and that was a large bend towards the east and the railroad is close to the bank and is right along the old channel of the river. From Old Canutillo to White's Ranch the river ran straight by the edge of the hills. He knows the rocks called Piedras de Amolar and he has recently seen them. He does not know whether the river was near to, or far from, those rocks. Between Alamitos and White's Ranch generally people traveled on the hills. Below Alamitos the road was at the edge of the hills because there was always water. The road was up in front of the house of Gualdarama. Between Tres Alamos and the place now called Vinton, he cannot tell exactly if the road ran near to, or far from, where the railroad now is, because there were a good many cut-offs in the road towards the river. Those cut-offs were roads formed by the travelers with wagons to shorten the road to go towards the river. Sometimes when the river was dry they would come down to the playa or to the meadow of the river. He does not remember how many of those places there were as he traveled on horseback. Some of them were short and some were long. Between Alamitos and White's Ranch there were some immense bosques on the west side of the river. There were no such bosques on the east side because when the river was high it undermined everything on the east side. He knew Chapo Reyes at La Mesa. He knew of his having a ranch at the place that they call Chapo Reyes yet. At that place when he first knew the river it was right there. He never became acquainted with a place called Duraznito. He remembers when the Texans came up the river. He thinks it was in 1860, with Colonel Baylor. He remembers a great flood in the river when those soldiers were at, or near Mesilla which he thinks was in 1861. The river changed to the west side of Mesilla afterwards, he thinks in 1863 or 1864.

He does not remember when the river went away from Alamitos, but it was after 1860 and from '61 to this time there have been a good many changes in the river. He came down to get his share of the crops from the land at Chamisal until the river destroyed all of the land, but he always used to come to El Paso. The land was destroyed after the river changed from the east to the west side of Mesilla, but he does not know what time the dam here was destroyed. He thinks, but he does not know, that the change at Mesilla occurred about 1863, and he has no idea how long after that his land was destroyed at Chamisal. From the time that he first knew the river up to the time of the floods after 1860, he had not seen any change in the river between Alamitos and White's Ranch.

On cross-examination, he says, that he does not remember what year it was when he first saw Alamitos. In those days on the east side of the river the only settlement was Brazito—the fort, a fort of the American government where there were regular soldiers. Being asked if that was the same as Fort Fillmore, he says that after the war the Texans called it Fort Fillmore and prior to the war it was called Brazito. It was on the hills and was near the river because the government tank went to the river to haul water for the fort. The nearest place to Brazito which now exists was Stephenson's hacienda, a smelting plant where they extracted the silver. He does not know how many miles that was above Anthony. It was not above Las Cruces, but below. Brazito was between Alamitos and Las Cruces. He did not know how far in miles was Brazito from Alamitos. La Mesilla existed in those days and it was a town which, according to his information, was settled in 1850 and he first knew it in the latter part of 1853. It was then on the west side of the river. When he first knew Mesilla it belonged to Old Mexico in 1853. The dividing line of the United States was fifteen miles

to the north of Mesilla on this side. He thinks Robles was in New Mexico. He has seen the monument on the line between New Mexico and Old Mexico—a monument of lime and stone, and it is there yet at the foot of a hill and about 4½ feet high. It is fifteen miles from Mesilla. It is in front of Dona Ana which is on the east side of the river and the monument is at the northwest and is right along the Tucson road. It is a long time since he saw it. He does not know who built it. The other monument he knew was at Carrazilito, almost in front of Deming, and the monument at Dona Ana was built as a dividing line between Old Mexico and the United States. He does not know when that monument ceased to be the dividing line. After the line left Dona Ana he does not know where it went. In the early days he does not know where the salt flats were above White's Ranch. He is then asked in Question 195, if he does not know where the people from Paso del Norte and Chihuahua went for years to get salt, and he says he does not remember. (It may be said here as a historical fact, that the salt deposits which counsel evidently had in mind are some distance to the east of El Paso and were the scene of serious trouble about 1878, and there were no salt deposits in the region which is involved in the present controversy.) He further says that he does not know of any salt deposit above White's Ranch where people got their supply of salt. When he first knew Alamitos, being asked if there was a large grove of tall cottonwoods there, in Question 198, he answers, "There were only those, one of which exists now"; and he says further that is the tree that he knew at that time. Being further asked, if those cottonwoods were not the largest ones in the whole valley above here, he says, there were no cottonwoods to the east only those that were there right there at that place. For some mysterious reason, counsel was trying to lead the witness to say that the cottonwoods at Alamitos were the largest on either side of the valley above here, but through some

evident misunderstanding, the witness talks about the bosque on the west of the river being a very large bosque and he says he knew the one there which exists there now, and is led by counsel into saying that was the only large tree when he first went there and it still exists there. It is larger now than it was then. He does not know how high it was when he first knew it, nor how high it is now. Being asked, what "Alamitos" means, the witness says that among the Mexicans, where there is a bunch of little cottonwoods they call it "alamitos". (It may be said here that "alamo" means a cottonwood tree and "alamito" is a diminutive of "alamo".) At this point there is some confusion about dates as the witness is brought to say that in 1848 he was not yet born, but being asked when he was born he says June 23, 1840. He does not remember seeing, in '53 or '55 any signs of large cottonwood trees which might have been there prior to that time. He saw Alamitos from the road—one single tree, about 1855. There was not a stage stand there when he first saw that tree. He does not remember when he first saw the stage stand there, nor any house at Alamitos. He is able to identify the old river at Alamitos because he saw it and saw it running all around the hills towards the east. The hills were east of Alamitos. The river was next to the tree and then the river went towards the first hills where you could go up to Anthony. East of this tree there is a hill at this time quite far, but he does not know how far. He knows nothing about measurements with the bare eyes—with a line, yes. He cannot estimate distance, and the only measurement which he can state is far or near. The present town of Anthony is near to Alamitos. As he said before, he saw the river at Alamitos in 1855. Lately he saw Alamitos, within less than two months, with Mr. Reber and several others—Mr. Baker, Mr. Van Patten and other Mexicans whose names he does not know. He thinks it was before Christmas but he does not remember. He was somewhat sick. Being asked, to

name one Mexican who was along, he says the only name he remembers, is the name of Dionicio. These Mexicans came from Mesilla, from Chamberino, and there were twelve or thirteen, all old men. Being asked, if Mr. Austin was along, he says, yes, and he was their cook. Being asked whether it was before or after Christmas and where he was on Christmas Day, he says he was at home and he saw the river before Christmas, but he does not remember how long before, but it was in December. After he saw the tree and measured from the tree to the river bank, he came to Canutillo. He saw someone measuring it with a tape line, but he does not remember who did the measuring. He thinks Mr. Van Patten also was along and that there was a surveyor. When they left that tree they followed the bank of the old river. He could not walk himself but they followed the old bank where the old river used to run to Tres Alamos. He knows they followed the old river bank because he could see them doing that, and he knew the bank. As a young man he saw the bank of the old river from Alamitos to Tres Alamos, but he had no business to follow it—his business was to travel along the road. In Question 278, counsel tells him that from Alamitos down to Tres Alamos is some miles, and he answers there are no miles. He was in the wagon himself, and he saw the others following the old river bank and he knew they were showing and taking notice of the river bank and his own knowledge told him that. He saw them all the way to Tres Alamos as they went down. He knew they were walking along in the old river-bed because he could see from the road where the old river used to run. It is a short time that that land was placed under cultivation. He saw some land plowed up there, but he does not know that it was an alfalfa field. He knows that they were walking in the old river-bed because he was paying particular attention to everything—between Alamitos and Tres Alamos. There is a frame house near the bank of the old river to the west side, which may be midway

between Anthony and Tres Alamos. He saw the house and from Anthony he told them that there where that house was is where the channel of the river was. He does not remember when they took out an irrigation ditch above Alamitos and brought it down to Anthony and never saw an acequia at that place. He does not know of any one having a farm or cultivated tract of land on the east side of the valley between White's Ranch and Alamitos. He does not remember when the first farms were opened on the east side of the river. In the early days between those two points it was a desert and he never saw an irrigation ditch on that side of the river, nor where Canutillo now is. If there had been any there in the early years he surely would have seen it. There was none in '53 nor in '55. He does not know how far it is from Alamitos to Tres Alamos and he refuses to guess at it. Being asked how long it took him to walk from Alamitos to Tres Alamos, he says, that when he was a boy, he could travel fast enough, but now it would take him four or five hours. It is near but his legs do not help him. He says he does not speak English, but where there is nobody to interpret he speaks with the English and they understand. When he needs something and he is forced to talk English they understand him. He is then asked what is his business, and he says, he occupies himself in scolding his children. They are already grown, but he gives them his orders and they obey his orders and when he scolds them, instead of answering him back, they set to crying. They are farmers. (Parenthetically, it might be said here, that this is in harmony with the general custom among Mexican people. No matter how old a child is, he is always submissive to any orders from his father and it is not unusual for a father to inflict physical punishment upon his sons for any misconduct, no matter how old the son may be.) The witness says he was a farmer all his life time and he has held the office of constable at Las Cruces. He and Don Eugenio have not

often worked in political matters together and the witness never held office under him, but once Van Patten was justice of the peace and the witness was constable. He does not know whether Van Patten has been sheriff or not. From '64 to '74, he lived at La Mesa, but he did not travel up and down the river between those years. Being asked what was the last year he traveled up and down the valley in the early days, he says in the year '60 he traveled and in '66 or '67 he thinks he was working with the wagons of Mariano Samaniego, and he does not know if he traveled that road in '67. He used to haul and freight flour from Hart's Mill to Fort Bayard and Fort Selden. In '66 he does not remember that the river was in the same place at Alamitos, as he does not know. He did not stop there to water his teams. He stopped to water his teams at Ollas de Agna, this side of Brazito; and below Alamitos at a place that was called La Colonia. This was evidently a mistake because in answer to Question 339, he says, that he thinks it was at Canutillo and the river was running there at that time and in '66 the river ran straight to White's house, and he could see the river next to the hills all the way from Old Canutillo to White's house, and he is further led to say, that in '66 between Alamitos and Tres Alamos, he could see the river at all places and it was near the hills on the east side of the valley. He does not remember a flood in '67. Afterwards the river commenced to cut towards the west and left the east side. The river jumped and created a channel and ran wherever it pleased, "And even today now the river is trying to get on its original center". His ten acres of land between here and Juarez were between the two electric car bridges and near the river. There were other properties to the north of his. He is asked in Question 357, if he remembers when Salazar located the river in 1852, and he says, he was not here in '52 but at Corralitos, and did not come until the last of the year '53. When he came from Corralitos he made the

first trip up the river on the west side and he came down on the east side in '55, in the latter part of September, at the time the crops are gathered. When he went up first on the west side he was inside of the wagons and nothing concerned him outside. In '55 the only thing that concerned him was watching the Indians. They were committing depredations all the time. They were there all the time at the Puerto de Soledad which is in front of Anthony and Alamitos. The Indians lived in those mountains. He does not remember when any soldiers were camped at Alamitos and he does not remember when they were camped at Magoffinville. They called it Franklin at that time and up above there were some soldiers' quarters on the edge of the hills where El Paso Street turns, but later they changed the soldiers down below. He does not remember when the custom house was at White's Ranch. He is able to find the place where Tres Alamos was because the trees are there yet, near the track. He never knew any other name but Tres Alamos; and being asked, when he first heard that name, he says, he does not remember the year, but when he made the first trip he started from Mesilla in the morning and arrived at Paso del Norte about three or four o'clock in the afternoon. It was long afterwards that he heard of Tres Alamos. And being asked, if it was not within the last few weeks, he says, it was long before that. He is then asked who told him first that the place was named Tres Alamos, and he says, he heard the people so call it and he does not know. He first heard it called that about twenty years ago, perhaps more or perhaps less. He has heard of La Bruja in the late years, but he really does not know where it is. He heard of La Bruja before he heard of Vinton, but he does not know which he heard first, Tres Alamos or Vinton. He first saw the house of Gualdarama in '86 or '88, and he was living there. There were several lime kilns but he does not know what they did with the lime. He did not know the beaver dam below Canutillo and did not know Doroteo Salado nor

where he had a house and he never saw a spring there. In some parts between White's house and Alamitos, the road was somewhat far from the river, but the river could be seen, but he does not know what was the longest distance at any place between the old road on the hills and the river bank. He is asked in Question 421, what difference did it make to him where the river ran, and he answers, "The difference was that I always saw the river". And on the other side there was quite a lot of bosque. There were no bosques to the east of the river. The river made bends and changed to other places. There were no large bends between White's house and Alamitos and no trees on the east side of the river. Being asked in Question 429, what was the last year he traveled up and down that road he answers, that he does not remember; when the river changed, they took the lower road which came down to Anthony and went to the other side of Tres Alamos on the other side of the track. The road went to the west after the river changed which was long after the Civil War. He does not remember what year was the Civil War. He does not know whether the Texans came in '61, '62 or '63, but he thinks they came in '60. Some other persons say that it was in '61. Being asked in Question 437, if Colonel Baylor did not come first and then General Canby, he answers, "No, General Sibley". He saw the battle of Mesilla, and being asked how old he was, he says, "Cannot you make the calculation yourself from the year '40 to '54?" When the flag was raised he was perhaps thirteen or fourteen years old and when the Civil War of Texas was perhaps he was sixteen or eighteen years old, but he is not sure. He was at home when the battle of Mesilla was fought. It was not much of a battle. Some of the cannon balls went as far as his house, in the yard of his house, the soldiers opposed to Colonel Baylor came to Brazito and they were in camp there. He heard that they had run away. He does not remember how long that was before General Sibley came.

First Baylor came and next Sibley. There were about twelve persons who went with the Americans to show the river the other day and he knew the name of but one of them. He went in the wagon to Alamitos but he does not exactly remember if he came to Tres Alamos on foot or in the wagon. He was sick. The others came on foot and Mr. Van Patten was there. Being asked if Van Patten would walk in the lead, he answers, that an Indian was— an Indian was in the lead who knew more than any of them. He was a northern soldier. He thinks his name is Dionicio. He calls him by the name of Apache. This was Dionicio Parra, whose testimony begins at page 1123. He is not an Apache, but had been a captive among the Apaches. He was also at Mesilla, the witness thinks, from the year '50 and everybody followed that Indian. He does not know that they left it to the Indian to determine where the old river-bed was. They were together and he was with them. He did not see any stakes set. Being asked in Question 466, if these men walked all the way from Alamitos to White's Ranch, he answers, "Most of the road they traveled on foot and those who were walking walked most of the time". He, himself, and Rodrigo Ruelas and another one were in the wagon. Mr. Austin walked, and Mr. Reber and Mr. Van Patten, and Mr. Baker almost the whole distance from Alamitos to White's Ranch. They got down to White's house very late and they camped at a white house and slept inside the house. He does not know whose house that is. It is three rooms and a hall, it is quite far, from White's house. The next day they went across the river with the wagons and spent one day on that side. They went to Piedras Paradas and from there up to the hills, because there is no road of any kind. They went up the hills and then came down to the old river-bed where the river used to run. He did not know but Piedras Paradas at that time. He did not know the other places. They camped for noon on that day on the top of the hills and he thinks the object was

to find out where the old river used to run. They found the signs of the dry river. The road goes along the edge of the bank and the bank is higher than this room; and at this point the examiners put in a statement that the ceiling of the court room is over twenty feet high. It is not an old river-bed over there, but it is a channel that the river made sometime ago when it went by Amoles and La Union. He did not see the Corral de Tapia. He heard it called by that name before that time. Nobody can know where it is, everything has changed there. He cannot tell how far he went beyond Corral de Tapia, but if he had known Corral de Tapia he might say. They went along the road and crossed the Canutillo bridge about six o'clock, perhaps later. He got away from them that night, because he was sick and went to Las Cruces on the train. The other men remained at Frietze's store. He did not take any supper, but some women who were his acquaintances, prepared a cup of atole for him and that was the supper he took. When he was on the other side that day some of the men traveled on foot and some in the wagons. The road was very heavy, there was much mud, and they walked until they got to a good road. There were two wagons. Going by Piedras Paradas the men were walking. The river strikes the Piedras Paradas now. They crossed the river when they went on the west side on the bridge, and the bridge is in front of that white house that belonged to Don Cresencio and the ruins of White's house are quite far above. In the early days he heard the name of Duraznito, but he did not know it. He heard afterwards the name of La Bruja, Uranguena, and Duraznito, but when he came and traveled the first time, he did not know anything about these names. Being asked, if he remembered who first told him about any of those names, he says it was common talk. He has shown the river only once and with sacrifice at that time. He says he is sitting here at a great sacrifice now; that he has a rupture and besides that his knees cannot sustain his

body. He has not made a written statement about what he knew of the river. He says he was sick when they took his declaration on the other side where they had dinner. Mr. Baker took it down.

On re-direct examination, the witness says, that in '55 and '56, he knew Fort Fillmore and the road which he traveled and which went by Alamitos went to Fort Fillmore. Being asked in Question 537, if there was any other road going up the river which went to Fort Fillmore, he says, there was a road from Las Cruces and from Mesilla to Fort Fillmore, which is below Las Cruces on the land grant of Stephenson. There was only one road from El Paso going up which went to Fort Fillmore. He remembers the Piedras de Amolar and he took some of the stones to sharpen his axes from there. Those rocks are to the south of White's Ranch and right close to the river. From White's Ranch down to those rocks, the river ran straight. It formed a bend and there was a whirl-pool there. The whirl-pool was near to Piedras de Amolar, below the Piedras de Amolar. Those rocks were at the beginning of the canon but a little far from the beginning of the canon. On that trip showing the river they were three days. They slept the first night at Vinton in a new house there and the next night at the white house below White's Ranch. He has known Mr. Van Patten since '57, '56 or '57. At Mesilla they were not friends. He knew him only by sight at Mesilla. Afterwards when Colonel Baylor came, Van Patten got up some men and went to hunt Apaches. Instead of going to the war Van Patten went to hunt the Apaches, the Indians. At that time he was not on friendly terms with him. After that time he became well acquainted with him and they have been friends. At one time he was justice of the peace at Las Cruces and the witness was the constable. At one time they were not on good terms. The witness was a Republican and Van Patten was also a Republican and he turned a trick and became a Democrat and for

about two years they were not on good terms. Afterwards they got together again. Van Patten became a Republican again after that. He passed Alamitos after the river had gone away from there.

On re-cross examination, he is asked in Question 570, why did Van Patten go after the Indians instead of going to the war, and the witness says that it may be he thought it more proper because the Indians did much damage in the country. After that when the Texans had left, when he was a captain, it is a long history that does not concern this case at all, but then he followed the Indians. The witness had a very fine horse. Somewhere near Tularosa Van Patten attacked an Indian camp. He may have killed some or not. The Indians had stolen the horse of the witness and Van Patten was riding that horse at Brazito. Once he came to Mesilla on the horse and the witness told James Lucas that Van Patten had his horse and then Jim Lucas was a Texan. He went to see Colonel Baylor and he gave Lucas an order to turn over the horse to him and Van Patten got very mad, but afterwards he turned over the horse. Then Van Patten came to El Paso and at Senecu' he married an Indian girl. The witness did not see him any more until six or seven years afterwards and from that time on they were good friends. Van Patten did not keep his anger any longer after the witness took the horse away from him.

On re-direct examination, he says he was about 18 years old when he took the horse away from Van Patten and he was not yet married. He was 30 years old when he got married. He says, he ought to have joined the northern army at that time as many young men from Mesilla joined it and now those fellows are receiving a pension and he has none.

On further cross-examination, he was asked if Van Patten draws a pension and he answers, that he was a rebel soldier first and afterwards he was a northern soldier.

Next we have the testimony of

ANTONIO GARCIA

which begins on page 1039 of the record.

This witness says that he lives at Mesilla and came from the State of Chihuahua in the early part of 1851, and went to Mesilla. He was born on June 13, 1838. When he came to Mesilla in 1854 he crossed the river here at Franklin and went on the Fort Fillmore road on the east side of the river. He is a blacksmith and he learned his trade at Fort Fillmore and went there and learned his trade in 1852. He does not remember when the Fort was established, but it was new, it was not finished. He knew only one road from Franklin to Fort Fillmore. He made a trip in 1856 to El Paso on horseback on the same road and returned on the same road. In '61 he made another trip on the other side by a place called Old Amoles. Between those times he did not make other trips up and down the river. He became well acquainted with the river in making the trips up and down the Fort Fillmore road. He became acquainted with the place called Alamitos and he says the Puerto de los Alamitos is out in the mountains. When he first knew Alamitos the river was very near. The road was on the hills there and coming this way the river was to the right, and going from here it was to the left. When he first knew the place called Alamitos he did not see any house there and afterwards they built a stage station there where the stages used to meet them. He does not know who lived there and kept the station. He heard the name of Scott, but did not know the man. Alamitos was a stopping place. They stopped there to give water. He has recently revisited that place and could recognize it as the same one because the river was right there. There was woods and brush to the other side. On the other side of the river there was a very strong bosque of cotton-

woods and tornillo. He does not remember very well if there was any alamos at Alamitos, when he first knew it. The river below Alamitos ran straight to a place that some people called Dos Alamos and other people called it Tres Alamos, and there was a bend. From Tres Alamos the river ran towards the sunset, but you could not see where it turned. Above Tres Alamos there was a small bend. Tres Alamos was near the hills on the east side and they used to travel on the hills. When he revisited that place he saw a new town called Anthony lately. When he recently visited Alamitos he came down the river below Alamitos on foot. They left the wagon above and they went on foot to the place called Dos Alamos by some, and Tres Alamos by others. They traveled away from the road along the edge where the river used to run. He says he cannot make any estimate of the distance from Alamitos to the bend in the old river. And he then says, he wants to be excused once in awhile for standing up for a minute or two; that he is ruptured and cannot sit down long at a time as his truss hurts him very much. Below Tres Alamos the river ran near where the railroad now is. When he was there recently he saw a place called Vinton where there were brick yards and that was below the bend which he spoke about. He did not know the name of that bend which was near Vinton and he does not know where the end of that bend was, nor how far to the west it went. He did not know the Estero de las Sanguijuelas. He heard the name, but he never knew the place. He saw recently the town called New Canutillo. He remembers having seen two esteros that were left there when the river was high, but he does not know the name of the esteros. They were on the upper side from New Canutillo. He is not very positive, but it seems to him that they were above. With reference to the bridge at New Canutillo, the river ran right near there and near to where the railroad now is. He only

heard the name of Doroteo Salado, but he did not know the place. He heard nothing about him except his name. He knew a place called Canutillo Viejo, but he does not remember it. It was on the east side of the river, but he never stopped at that place where the road was on top of the hills. Between New Canutillo and Old Canutillo the river flowed near where the railroad now is. The old river was west of the railroad; and then he says there are some places where according to the location of the railroad it ran on one side and places where it ran on the other side. He cannot remember very well. He did not know the place called Duraznito, but knew only the name. He knew White's house, which was the first house they would see going from here up. When he first saw it, it was abandoned. From Canutillo down to White's Ranch the general course of the river was near the hills. White's house was very near to the river on a hill. The main current of the river was passing by. He only knew the name of Piedras de Amolar and never saw the place. Between Alamitos and White's Ranch the road ran generally on top of the hills. At times when the river would go dry, the road would come down to some places,—a very few places. Being asked what kind of places were they, he said, it was good land which the river had left. When the river would overflow it would fill with water and when the river receded it left good bottom land there. The road where it came down from the hills would go back up the hills again. He became acquainted only with Old Amoles on the west side of the river. He went there once on horseback. On that trip on that side he could see where the Piedras Paradas were, but not very well because he traveled at night. He knew only the name of Corral de Tapia and of the Alto de los Cuarones. When he visited Amoles, Jose Maria Garcia and some men named Enriquez lived there. The father-in-law of the witness was Don Rafael Bermudez. He was from El Paso, but he

was one of the settlers who went to Mesilla. When he visited Amoles he passed there at night and could only hear the noise of the river towards the side of the rising sun, but the distance he could not tell. He never went to Amoles again. The river used to run between Mesilla and Las Cruces and was the dividing line between the United States and Mexico. He was at Fort Fillmore the day they raised the American flag at Mesilla. Everybody went to Mesilla, but he remained alone there where he was learning his trade. Some soldiers remained on guard and everybody else went to Mesilla. Mesilla is now on this side of the river. He remembers when the river changed over from the east to the west side of Mesilla in '62. Some water remained running between Mesilla and Las Cruces, but between that time and 1864 it changed completely to the other side. He is asked in Question 104, what caused the river to change and he says, they had the head of a ditch there called Brava. (Brava in Spanish means wild or untamed.) The troops of the Texans were there in command of Colonel Baylor. They always had eight or ten men taking care of the head of the ditch, but at that time the Texans were already going to come this way. One of the assistants of Colonel Baylor told him that they were going to loot the town and commit great depredations. Those men were helping there to take care of the ditch and when they left there was nobody to help. There was a large flood. He never knew it after that change. Being asked in Question 107 if he says those soldiers under Colonel Baylor were helping to take care of the ditch, he says that he did not say that way, but when they learned that the soldiers were going to move away and that they were going to do some damage or depredation there, they had to send for the men who were taking care of the ditch to come to take care of their families and the river got in and destroyed the ditch. That was in 1862. He does not remember

very well whether there was a very large flood in 1864, but that was the time when the river stopped running on this side entirely. At the present time the river does not run near Alamitos. He does not remember when the river went away from Alamitos as he was a man employed at his trade all the time and he traveled very rarely. The last time that he saw the river running near Alamitos was in '56 and he did not travel along that road after '56.

On cross-examination, he says that people traveled in the night time on account of the danger of the Indians who were very bad and were living and camping in the mountains nearby, towards where the sun rises. They camped all along from White's Ranch up to Fort Fillmore. They killed people who traveled. They killed Mexican people, but he does not remember about their killing Americans. When he first went up the river at the beginning of '51 he was 13 years old, more or less. From Paso del Norte up to Mesilla there went with him three of his brothers and his mother, who was a widow, and they were taken by freight from Franklin to Mesilla. There was only one cart, belonging to Juan Olivas. One of his brothers was older than himself and the other younger. They had only one gun, a flint gun. He traveled parts of the road in the night and parts in the daytime. As they made the trip on the cart it took about three days to make the trip. They started from Franklin here in the morning about eight o'clock and stopped at a place, the stone house belonging to Mr. Simeon Hart. As soon as they camped there they went up a road on a very high hill and they went and slept at the other side of White's house. He does not remember now where they stopped that night. They made the trip in three days from here to Mesilla, part of the road at night. They did not travel all night any one night. They traveled several hours at night. He remained at the Fort as a

blacksmith up to '55. He worked for a German who was his foreman and then he went to Mesilla and started business for himself. He learned very little English at that time and he is sorry for it now. He could understand his foreman in German a little. He made the next trip down this way in '56 on horseback on the east side of the river. He thinks it took him three days. He came to see his aunt. There is some mistake here because in his answer to Question 158, he says that he started from Mesilla on horseback and arrived here on the same day and made the whole journey in one day. Going back the same day that he started from here he arrived there; he started about six o'clock in the morning and arrived at Mesilla at about half past six o'clock. He traveled the hill road. When he passed along on horseback it was in the month of August. There was considerable water in the river. The low places were boggy at that time as the river had recently receded. When he came on horseback he took the hill road. The road was near the valley. Those low places are a part of the valley. The hill road was not a long distance from the river,—it was near. You could not see it in all places from the road, but in parts of the road. In other parts you could not see it on account of the bosque, but you could hear the roaring of the river. There were large bosques, very thick, on the east side of the river,—tornillo and cottonwood bosques. Above Tres Alamos there were bosques. There was not a large bosque at Vinton. There was brush there. The bosques were farther below, towards the south. The place that he said this morning where the river turned to the sunset was where they called it Dos Alamos or Three Alamos. You could not see the river there on accunt of the bosque. He does not know how far toward the sunset the river went around that bend. Between Alamitos and the canon he remembers only that one bend at Two or Three Alamos because it could be seen very plainly. At that time the bends of the river did not concern him at

all. His only concern was taking care of his life. He was watching both sides of the road as there was danger from both sides. He carried firearms when he made that trip on horseback. Being asked, if he had a good horse, he says, that in order to make the trip in one day it must have been a good horse. In 1853 he was at Fort Fillmore learning his trade. He started learning his trade something near fourteen years of age. There were four companies at Fort Fillmore in 1852, two infantry and two cavalry, sometimes less and sometimes more. The Indians were dangerous until '61 and at that time the danger was not so great as the government placed the Indians on reservations. At Fort Fillmore when he first went there the commanding officer was an old man by the name of Morris who was about ninety years old and was ruptured. He did not enlist as a soldier, but in '62 for a short time he was a musician under Colonel Baylor before he went to Valverde. Baylor came to Mesilla in '62 and from there he went to Fort Valverde. He remembers the battle at Mesilla. He was at Mesilla and it was just at this time that he became a musician. A musician died and he filled his place only while they were at Mesilla. The battle of Valverde was fought the same year of '62. He was not there himself. He remained sick at home. In that battle the second in command was Captain Teel, commanding the Texans. After '56 he made no more trips up and down the river between Alamitos and White's Ranch, and his knowledge of the river is gathered entirely from his three journeys when he went as a boy,—first up the river and when he rode a horse down here and back again. The first trip was at the beginning of '51 and the second trip in '56. When he went recently to see the river, he does not remember the number of persons who went with him, but there were about ten of them, more or less. It was on a Saturday and Sunday, but he does not remember how many weeks ago. It was not

very long. It was before Christmas. On Christmas Eve he arrived at home at Mesilla after having shown the river. Christmas Day was Thursday the 25th and he was showing the river the day before Christmas. He began showing the river from Alamitos. Being asked, who took him to Alamitos, in Question 221, he says several gentlemen were there and indicates Mr. Austin, Mr. Baker, and Mr. Amado Chaves and others whose names he does not know. He says that Mr. Austin was the cook when they ought to have been the cooks themselves. "The times have changed so that now the burros give orders to the divers, and before the driver gave orders to the burros." In Question 223, he is asked, "Mr. Austin loves to cook and does that on all occasions?" His answer is, "Very few men are as Mr. Austin. Why should he be our servant, our menial, when we ought to have been ourselves." Mr. Chaves, Mr. Baker and Don Eugenio Van Patten were there and a lawyer named Reber. He does not remember if there was a surveyor. There were about ten Mexicans, more or less, two wagon loads. One wagon with mules and the other with horses. They walked from Anthony to Alamitos on foot. At Alamitos he found a cottonwood tree there and where the bank of the old river was. The stage road or the Fort Fillmore road ran very near to where that tree now is. Sometimes they used to stop to water their stock there. At the time he passed there he watered his horse there. At that time he does not remember that there were some very large cottonwoods there. He says he can see it is the same spot where he watered his horse because it is very noticeable and he knows it is the same place by the ruins. It was then where the bank of the old river was. It has filled up some now but it is there yet. He does not know whether the river has run there in the last twenty years or not. When he passed on horseback he was told that at some islands, and even the names were mentioned of persons from El

Paso cultivating lands at some islands. He remembers James Magoffin and they called this place here Magoffin's Fort. He does not remember Magoffin owning a farm in the valley above. He does not remember an irrigation ditch that he could see from the road in the valley above. He does not remember any irrigation ditch that ran by Alamitos. He knows nothing about the west side of the river. He is then asked, in Question 250, what year it was that he passed Old Alamitos, and he answers, at the beginning of '51 and the second trip was in 1856. Counsel then told him that he was speaking about the west side and had made a mistake and the witness then says, "I want the court to know that once I was wounded in the head and I cannot answer questions very rapidly or quickly". And his next answer is, "I do not know, sometimes, what I am saying, or whether I am sitting or standing up". Counsel then tells him that he meant to say when he passed Amoles instead of Alamitos, and he says that it was the latter part of '62 and you could hear the roar of the river from Amoles. It was at night. The water that made the roar did not seem to be very near, but at night you can hear at a long distance better than during the day. He cannot say how wide was the valley from east to west at Amoles. During the first two trips he has mentioned he heard some of the names applied to places. Up to 1856 he knew the names Salado and Sanguijuelas and Los Amoles. He knew that these names applied to fixed places in 1862, but in his next answer he says he never knew any of those places only by names. While he may have heard of Sanguijuelas in the early days he never knew the place and he says the same about Old Canutillo and Duraznito. In '51 and '56 the only places he knew were White's house and Alamitos. Being asked if there had been any improvements or houses built at White's house, he answers, no, sir. And in answer to the next question he says there was a house and a corral —a house of adobe walls, and it was on the side from

where the railroad now is to where the sun rises. He then refuses to estimate the distance of the house from where the railroad now is. There is now an arroyo near that place and a little above. He is then asked if he remembers now some piles of rock there and he says that he and Jesus Arvizu were inside of the river and it was very cold and the wagon was covered. He cannot say that between the fence on the east side of the railroad and where the house was, is the paved country road, as he was inside of the wagon and therefore could not see. The appearance of the country along there is very different now as the road goes along the valley and before it went up on the hills. He is then told in Question 287 that he had said something this morning about an old river-bed east of the railroad track, and he says that he does not know the names of the points of the compass, but he said that the river ran on the sunrise side of where the railroad now runs, and these words being put in his mouth by the question, he judged by the fact that there is now what appears to be an old river-bed there and he says, of course, but being further told that it is by that only that he thinks there was a river there, he answers, "Not that alone. I saw the river. The first trip that I made I saw the river from the road, as it was running, very near." He thinks it was in August when he first went up the valley. Most of the years there was a flood time which commenced in May and lasted June and July up to August, and many times up to September water was flowing down the river. The rainfall was very frequent both in winter and in summer, very much more so than now. It is forty years that it has not rained in this country compared to how it rained before. In '53 the wheat crop of Mesilla was ruined by the rain and it used to snow a good deal before. He remembers that in '62 he went to Santa Fe on a freighting expedition and the snow was five feet deep in some places. Being asked, what effect would those big floods have, he says, that it

overflowed many farms and ruined them. It came out of the banks. The cottonwoods in some places were carried away and washed away, not only by the currents of the river, but by the currents of the arroyos flowing into the river. In places those big rises in the river would cause the current to cut the banks on one side and the other and in some places it would cause the river to make bends, and in some places fill up the old bed with sediment and silt, and in some places the channel would change from an old bed to a new bed. From White's house up the valley and on to Mesilla, the river in parts ran straight and in parts it did not. At the present time it is not straight, it bends around. From Alamitos recently they came down to Anthony which may be 600 yards, more or less. He came on foot to Anthony and passed by alfalfa fields and by some houses and he thinks there were stakes along there but he does not remember very well about the stakes. He passed a new barn and a farm house, on the west side, about 300 yards west of the new hay house. There were 6, 7, or 8 men passing along there on foot with him showing the river. He does not remember that they passed near a metal monument. He passed through farming land all the way from Alamitos to Anthony, but you can notice where those farms are, now, where the river used to run and he was following what he thought was the place where the river used to run. He does not remember that in the last 65 years the river has run almost everywhere in that locality. He did not know that there was a canal brought down from Alamitos to Anthony. And being told in. Question 326, that he does not know whether he was following the bed of that old canal or the canal of the river, he answers, "We were following the bank where the old river used to run". There are no high banks there but there are low banks. They came from there on foot to a place they call now Tres Alamos, which he knew before as Dos Alamos. Opposite Anthony they crossed a road which is near to the sunset

side of the railroad and there are fields all the way through from there down planted in alfalfa and other plants. He does not remember any stakes marking any lines this side of that road. If they were there he did not notice them. Being asked who was the principal leader in showing the old channel from Alamitos to Dos Alamos, he says, they all together were showing it and they walked four or five abreast. He does not know if there was any controversy between the members of that party as to where the river ran. All of them agreed that that was the river-bed they were seeking, and he did not look to the sunset side of that low place for any other channel. It is not very far to Dos Alamos from where Anthony now is. They came all the way to that place on foot and then he was quite tired himself and got into the wagon at that place. Dos Alamos is near to Anthony. He says he cannot walk a long distance and he did make the trip between those places all right. He only heard the name of La Bruja and never knew the place. Between Alamitos and Dos Alamos in the early days there was tornillo and cottonwood bosque. In the early days he only passed by Dos Alamos. Being asked where was that first estero this side of Alamitos, he says, he does not remember the name of the place and at that part there was a house belonging to a man named Gualdarama which he sold afterwards. He only heard his name mentioned. It is only a short time that he heard the name of Gualdarama and at that house that was there where there was an estero they told him that it belonged to Gualdarama. Several persons told him so. The house was in a conspicuous place and he asked who the owner was and they told him that he lived at La Union. He first heard of Gualdarama several years ago. From Dos Alamos he walked for a short distance and could not stand it any more and got into the wagon. There was a house near the road and some farming land. He does not know who the owner of the house is and they stopped there a little after noon. He did not get out of the wagon any more

from that point. Others did, but he does not remember the names. Jesus Arvizu and he could not walk. Jesus Arvizu was one of the party and a man by the name of Dionicio and he does not remember the names of the others. He was with them two days. The first night they camped where the brick kiln is, right in front of the brick kilns is a house not quite finished and they allowed them to sleep there that night. It is at Vinton. The next day they came in the direction of White's house and camped that night in front of a bridge which is new to him somewhere near the house of White. The following day at night they stopped at Canutillo. The third day they spent on the sunset side of the river. He did not know anything about the west side but was compelled to go where the others went. They crossed the river and came back by the Canutillo bridge and slept at Canutillo. The following day they left on the train. Mr. Austin and Mr. Baker were with them all the time. Mr. Van Patten was with them all the time. Question 380 is, "Mr. Van Patten was the leader of this expedition was he not?" To which the witness answered, "We all together were there to make the examination". He is then asked, what was the object of the examination and he says to know at what time the river ran there. And he is then asked, as to what date he was attempting to fix the river, and he says, he thinks it was the year '62 because it was called the Vado de Muleros. He does not know what the object of fixing the river in 1862 will be. He never heard the object stated by anyone. They were only invited to come and examine certain points or parts of the river. He has known Eugenio Van Patten from '61 or '62. He did not come to show the river as a favor to Van Patten who was paying him for his time and who told him that if he would come he would pay him for it and he did pay him. He does not know why Mr. Van Patten wanted to locate the old river and does not know yet. In the early days above White's Ranch there were bosques to the west side of the

river only and there was brush on the east side of the river. On the sunrise side of the river there were not very high slopes, but there were some that came down and on that side there was only monte—brush, and the bosque was on the west side of the river. He is then asked, what is the difference between tornillo and cat's-claw, and he says that tornillo has a certain form and appearance and una de gato or cat's-claw has a different appearance and form. Una de gato has large thorns hanging and bending down. He does not remember the size of the bend of the river above White's Ranch. With reference to White's Ranch the government road went up on the hill. The year that he first came here he heard the town called Franklin. And being asked, where he crossed the river to reach Franklin, he points southeasterly; and then being further asked, says there were canoes when they crossed the river. He is then asked if he heard of any persons representing Mexico and the United States surveying the river, and he says, that, when he was at the Fort he heard and knew that a man by the name of Salazar and another by the name of Iturbide representing the Mexican government came here to turn over to the American government what Santa Ana had sold out and the two commissions met at Mesilla. That was in 1853; that is to say, after the flag had been raised at Mesilla. He is then asked, in Question 411, if he heard of the commissions prior to that time to survey the river when the corner of Mexico was at Dona Ana and he says he only heard of that commission that came to turn over that piece of land near Mesilla. When they turned over that land he had been in this country three years, or had been at the Fort for three years. It was in 1854. About the time he first went to the Fort, he did not hear that the Mexican and United States commissioners were locating the river. Salazar only came to this country once. He never came back any more. He did not hear the name of Major Emory, but if he did he does not remember. He

does not remember when they established a monument at Dona Ana. He is acquainted with Dona Ana and was there several times, but he does not remember the dates. He does not remember that near Dona Ana was a corner of Old Mexico prior to '54, but he remembers that the river between Las Cruces and Dona Ana was the line between Old Mexico and New Mexico. Mesilla was not in Old Mexico after '54 when the flag was raised. Then it belonged to the United States. Being asked, from White's Ranch to Alamitos, where was a boundary line between Old Mexico and the United States, he says, that the line was on the mountains on the other side of Mesilla. He does not remember a place called Fronteras. In the early days he never heard of White's Ranch being called Fronteras and he never saw White. In the 50's the custom house was here in Franklin. He does not remember that the place called White's Ranch was a custom house. He does not know when Salazar and Emory camped at that custom house and never heard that they camped there.

On re-direct examination he is asked if he saw the same places in 1856 that he had seen in 1851, and he says, yes, sir. Juan Olivas was the name of the freighter who brought him and his brothers and his mother up the river in 1851. He seemed to know the country and to know the different places along the river. He thinks it was in August of 1851. He repeats that he went to Mesilla at the beginning of the year, although August was not at the beginning of the year and he remembers that he went to Mesilla in August. He does not remember the full name of Salazar. There were two men, Salazar and Iturbide—they were the two who came to deliver that portion of the land which Santa Ana had sold. Being asked what had happened which affected his memory as he told this morning, he says, it was a blast when he became a miner; that he thought he was going to dig a wagon load of gold and the explosion of a blast hurt his head and he was two months blind and it affected his memory. He cannot

see well either and it affected his mind and his mind seems to vanish at times, but not all the time. At times when he gets warm or excited he cannot remember, and at other times he is all right.

We now come to the testimony of

FLORENCIO LUCERO

which begins on page 1069.

This witness says he lives at La Union, New Mexico, and is 96 years old. He was born at Juarez, at that time called Paso del Norte, and lived there about ten years when he went to Mesilla to live. He remembers when Mesilla was first settled and he was then here at Juarez and went there afterwards,—after the first houses were built. When he went up there he went on the other side of Amoles. During the war between Mexico and the United States he was living at Paso del Norte and was very small. At this point on page 1069 of the record, it seems that counsel agreed that the witness could not be as old as he thought that he was. He went to Mesilla when he was about 14 years of age and he remembers when the flag was raised at Mesilla in 1854 and was living there at that time. He got married the second year after the flag was raised and had been living at Mesilla about four years before the flag was raised. During those four years he came down to Paso del Norte on this side. He says they used to make two trips in the year to bring crops of corn and beans to Paso del Norte. His aunt lived there. He became well acquainted with the road between here and Mesilla and with a place called Alamitos where there were three cottonwood trees. Alamitos was a stopping place and people stopped to get something to eat and to water the stock. The river was nearby. There was good grazing ground near there, a good deal of it. The pasture was towards the hills from Alamitos. Ala-

mitos was near the hills. The river ran close to Alamitos on the side towards the setting sun. On the other side of the river there were no houses. There was the Scott Ranch on this side and the station. On the other side of the river there was the old Pueblo of Amoles, but there was nothing but bosque near the river, and grass. From Alamitos the river ran to the side where the sun rises and it formed bends. It made a bend towards the Rincon of Artesa and then another bend towards the Estero de las Sanguijuelas. He knew the place called Dos Alamos which was in the bend of the river. The river ran near to Dos Alamos and there is only one tres there now. Dos Alamos was about two miles from Los Alamitos. It is near from Dos Alamos to Los Alamitos. Below Dos Alamos the river ran with the bends and went to Canutillo and from there it made a bend to Montoya, and it went by the beaver dam. He knew the beaver dam well. The beaver dam went across a portion only of the old river towards the hills. The old river came by the land of Escontillas below Montoya. He knew the place called La Bruja or the Alto de La Bruja. One road passed below close to Alamitos and when the river obstructed the lower road, the road went on top of the hills. Below Alto de La Bruja the river formed a bend. The bend went to Anthony. The next large bend below that one from the Rincon of Artesa came down to the Arroyo de las Sanguijuelas, which was a pond where these little animals lived,—leeches. He knew the Arroyo de la Artesa which was on the other side of the river and ran into the river. The Estero of Sanguijuelas was on this side of the river towards the bank of Canutillo and was below the Arroyo de Artesa. He knows the place now called New Canutillo and the river at that place when he first knew it, passed close to the house where he lived for about thirteen years. His house was below the hills and the river was running close to the bank. The river

ran very near his house. The house is not still there, the river destroyed it. He lived at Montoya afterwards for two years, but he does not remember at what date. At this point the witness asked to be excused for a few minutes as he is sick. He then says from the place where he lived near what is now called New Canutillo, the river ran towards the side where the sun rises and passed by the beaver dam and came towards the hills. The river ran down towards Duraznito and there were two branches, one went towards the setting sun and the other towards where the sun rises. Those two branches did not come together again but went down towards Duraznito and from there to White's Ranch. He knew a man named Doroteo Salado who lived near a little spring that is there. The name of the place was Montoya. The river was about ten yards from the house where he lived. The road was above through the brush quite a distance this side of where the railroad track now is. He knew the place called Duraznito which was below. There was at one time a peach tree there and for that reason it was so called. It was a stopping place for travelers. The river was right close to the tree. The bank of the river was very near and very near to the hills—right close to the hills. In those early days he knew a place called White's Ranch and he knew White himself who had charge of the custom house and examined all of the travelers who went to Mesilla. When he first knew the place, the river was right close to the house. The bank was close to the hills, near the house, and from there the river ran to Piedra de Amolar. White's house was on top of the hill. From Duraznito down to White's Ranch the river formed two bends towards White's house. It ran very near to the hills and went together at Piedra de Amolar where there is a bridge. Between White's Ranch and the Piedra de Amolar the river ran near the hills. He knew the place called Muleros which was a stopping place. He knew the Ford of Muleros which was below. On the other side of the river the

place was called Muleros, which was a large place and may have been a league in extent. At that place from the river to the Piedras Paradas it may have been about a mile. He says he is very deaf. He was well acquainted with the wagon road between White's Ranch and Alamitos. In the early years there were two roads, one below and the other one on the hills. When the river was low they traveled the lower road. They were not very near together; one went below through the bosque, and the other went on the hills. There might have been a mile between or a mile and a half, and they came together at the Prairie called Las Crucitas which is above Temascalitos where the Americans and the Mexicans had a battle the first time. That is higher up than Alamitos and was far from there. At Alamitos the road was about four yards from the river. The road passed about six yards from Alamitos from the river. On top of the hills was the other road. He was acquainted with the ranch of Gualdarama and the upper road passed right close to the house. It formed a bend and the bank was close to the house. He knew a man named Uranga who lived at Paso del Norte. He had property near the Chamisal ditch and the river destroyed it all; but being asked if he knew of Uranga's having property near the Estero de las Sanguijuelas, the witness says, he did not have anything there. He heard of the Uranguena bend, but that was on the other side. Uranga did not have property at Sanguijuelas, but he had property on the other side near the old pueblo. In those times there was an old pueblo called Los Amoles, but now they have a new settlement called La Union. The people all left the old pueblo and the river is running there. The people left because the river threw down the houses and that was the year of the Texans. A big flood came and drove them out. After that big flood the river divided and ran by the place called Nombre de Dios and by La Union. His father was Seferino Lucero and his mother Juana Gonzales.

On cross-examination he was asked if he had ever seen that appliance before—indicating the deffone, an appliance to aid the deaf which the witness has on his head, and he answers that the first time he saw it was when Mr. Amado Chaves took it to his home that he might hear about two weeks ago. Without that appliance he is able to converse with the members of his family and can hear well. He can hear also without the apparatus if they talk to him a little loud. He hears all right and the little noise or roaring of the instrument prevents his hearing well and he prefers to testify without the instrument, and the deffone is then removed from the head of the witness. He is then asked how old he is, and he again states 96 and was born in Juarez then called Paso del Norte. He knows Joseph Magoffin well. He does not know which is the older, he or Joseph Magoffin. It may be that he is older than himself as he was already a man when the witness first knew him at Franklin. He knew Joseph Magoffin's father, James Magoffin. He knew him at the Fort down below where there were soldiers. He remembers when James Magoffin had a farm above White's house and it was there when he first went up the river about two miles above White's ranch. It was a large farm and Price Cooper was in charge of it. He remembers the ditch which watered that farm. It was above Canutillo from the river and might have been three miles long before it reached the farm. He knew Price Cooper for four or five years. Cooper used to live there and the Indians ran him away and then he lived at Ysleta. Cooper cultivated that farm about three years when the Indians ran him away and burned the houses, and he then went to Ysleta to live. The head of the ditch was above Old Canutillo. The farm was on the east side of the valley. The witness and Ignacio Cumplido cut off timber or wood from the land and cultivated a few places or tracts of land—small pieces. They cultivated the lands of Mr. Magoffin and they would cut wood for Mr. Mag-

offin. The witness was a wood cutter for about fifteen years. The custom house was not at White's Ranch at that time. White had moved to Brazito. After White left for Brazito no one conducted the custom house at his place because it was ascertained where the line was and they moved the monument to where it ought to be. He remembers when the joint commissioners from Mexico and the United States surveyed the river. He saw them at the Salto del Agua. They went to establish monuments at Dona Ana. He does not remember the names of the surveyors, but being asked if he remembers the name Salazar he says he does remember that name and he was one of the commissioners. Salazar was engaged about two months because he placed a monument there and another monument at the brow of the hill. The witness was living at Mesilla when they placed the monument at Dona Ana. He remembers when the line changed from Dona Ana to a point below and it was in the year '54 when the flag was raised at Mesilla. He was present there at that time. He remembers the name of Major Emory, one of the commissioners. They had tents to live in and he saw the tents. He remembers when they camped at White's Ranch. White's house was in very good repair. It is now in ruins. During the time they were engaged in that work he traveled from Mesilla to Paso del Norte on the west side. He saw them near the old town of Amoles. He knew the Cuarone brothers and they were killed by the Indians while they were asleep. They lived at Paso del Norte. They came up the river to haul wood to Franklin and they went to sleep and were killed. He knows the hill bearing their name where they were killed. He does not remember the year in which that took place but he is satisfied that they were killed there. He was then living already at Mesilla but they had been killed before the flag was raised at Mesilla. He knew the Corral de Trosas very well. The Amoles road passed near that place. He must have been 14 or 15 years of

age when he went to Mesilla by the Amoles road for the purpose of working at Mesilla. In those early days they made two trips each year, one in which they hauled corn and one in which they hauled beans which they brought to Paso del Norte, on both sides of the river. He traveled both roads. He knew the Bend of Cobrena when he first made his trip to Mesilla. He remembers when the river ran by that place and says the river towards the south went to the side where the sun rises. Above this bend the river ran from above coming towards the hills. It divided into two branches and then the river went back to Cobrena. The river divided at the Island of Jose Maria Garcia. There was a branch of the river on each side of that island and Garcia had his ranch in the center of the island. When there was a rise in the river it ran on both sides of the ranch of Garcia. He remembers the Loma de Arena on the west side of the river and he remembers when the river ran by that place. It was a new river by the Loma de Arena. When he first knew the river it did run by that Loma. He knows a place called Corral de Tapia and knew it when he went up to Mesilla, and in those early days the river ran by Corral de Tapia. He knew Luis Barrio well and knew his ranch well on the west side of the valley where he lived with all his family and he remembers in those early days when the river ran near that ranch place. The river ran by that place at the time the surveyors with Salazar were locating the line. He knew in the early days the place called Piedras Paradas which was a whirl-pool that the river made at Piedras Paradas and it was there when he first knew the river. The Piedras Paradas were on the side of the hills and the whirl-pool was towards the side of the bosque. From the whirl-pool to the rocks it may have been six yards, it was very near to the rocks. The brush and wood carried by the river through the flood created this whirl-pool. He knew the old town of Amoles on his first trip to Mesilla where there was a very large

estero that the river had left as the river ran before about 50 yards from the old town and then the river made a bend around the island. When he first saw the town of Amoles he could plainly see that old river-bed and the bend of the river, plain enough. That old channel of the river ran first to where the sun rises and made a bend right there at the old town. He was very young at the time of the war between Mexico and the United States and does not remember the date when the Americans went into Mexico. The fight was at a place called Las Crucitas, up above. He remembers when Major Doniphan came from Santa Fe with his soldiers, and at that time the witness was about 13 or 14 years of age and was living then at Mesilla. He had been living at Mesilla about three years. When he first passed the old town of Amoles Mr. Simon Enriquez and other men came there. Pilar Carabajal and other men lived at the old town. Simon Enriquez was the father of Jose Enriquez. He had another son named Jesus and some girls and another son named Francisco. It was a small town, inhabited by a very few people. Most of the land owners went from Paso del Norte and came there to cultivate lands. Jose Maria Garcia lived there also, but he lived at the island. He remembers the little church at the old town of Amoles which fronted to the side where the sun rises. The river ran to the side where the sun rises leaning to the hills. The river leaned towards the hills above the town. The people from that town left and went to inhabit above the hill where they made a new town which is where he lives himself. He has lived there a little over one year. He was at Montoya for two years, taking care of Escontillas' ranch. An old river-bed cannot be seen near La Union, everything is obliterated as they have been farming and plowing up the lands and filling up. The old river-bed cannot be distinguished. When he first went up on that side, the river channel was about 100 yards from the town of La Union. When he first went to Mesilla he went up on the east

side of the valley. Counsel at this point on page 1083 tried to get the witness to tell on which side of the river he traveled on his first trip to Mesilla but for sometime gets no satisfactory answer. Finally on page 1084, he says that he first traveled, when he was going towards Mesilla, on the side where the sun sets, and the witness then says he wants to rest. He says that he knew Simeon Hart who was a man who was good to all his poor friends and that his business was farming and other business and he was the owner of a mill at Las Cruces as they came out of the town. The witness knew of his having a flour mill near Paso del Norte on the main ditch, but that mill at Paso del Norte belongs to Jose Ponce, the man who used to own first the Franklin ranch. It was not Jose Maria Ponce, it was another man who was in charge of the mill. The owner of this town where El Paso is was Don Jose Ponce who afterwards sold the town to two brothers by the name of John Gillette and Henry Gillette. Mr. James Magoffin was the owner of land below and other men had lands also below. He remembers when James Magoffin first settled on that land to farm it which was after the witness had gone to Mesilla and lived at Mesilla. He was born in Paso del Norte. Up to the time that he went to Mesilla to live he used to help his father attend to the farm cutting wheat and hauling wood. When he went up the river to live he was very young, about ten years old when he first went to Mesilla. From the time he went there he made several trips up and down the river to Paso del Norte, and made frequent trips with his wagon hauling corn and beans, on the sunset side of the valley. He used carts with old fashioned wheels made out of trees. They went along the wagon road on the west side towards the west of the mountain when they traveled towards Mesilla. He knew the Canoncitos which from Piedras Paradas was about three miles, it was quite far and was in the mountains. It was a wagon road called Los Canoncitos and

there were rocks on both sides. As they left Canoncitos coming towards Paso del Norte they came to the dam where they used to take water for a ditch in Paso del Norte. Going to Amoles, they came to the valley by the road on the side where the sun sets towards Muleros. He knew the place called Yerba del Manso which was above Piedras Paradas. It was a grazing ground for animals. The floods would come down when it rains during the months of June and August. The rains came in July and August and the floods from the melting of the snows were in May. The rain came first and the water from the snow came afterwards. The floods from snows came in May. They began to come in April, but in May were the highest and afterwards would come the floods in July and August from the rains. He went to live on the east side of the river near Canutillo in April to chop wood and lived at that place cutting wood for about thirteen years, until they got through with the bosque, but he does not remember the year. He was one of the first ax men that Cumplido had at that time. He cut wood for Cumplido on the sunrise side of the valley and also on the side where the sun sets. Cumplido cut all the wood there was in Mr. Magoffin's property. He had three or four ax men cutting wood and he paid Mr. Magoffin rent for the cutting of the wood, a yearly rent of one wagon load of wood. Cumplido cut wood on the Magoffin land for about twelve years, as long as there was wood in the bosque. When he first went there to cut wood with Cumplido there was a small wood on the east side, but the largest and the bulk of the bosque was on the west side. At the bosque in the places that they cleared they did some dry farming. They took the water from the old river and irrigated the land from that old river and also took advantage of the rains. Price Cooper lived at Ysleta, but he does not know what became of him. He thinks he is already dead. Cumplido lives at Canutillo. He was an heir of Jose Magoffin. Magoffin gave him some houses

and lands and those who worked so long he did not give them anything. He gave Cumplido lands where he lives. No land but the land where he lived. When he first knew Price Cooper, Cooper lived at Canutillo farming there. Cooper was there before the witness went to Mesilla but Cooper could not live permanently there on account of the Indians bothering him and he had to go to live at Ysleta. He lived at Canutillo about three years before he went to Ysleta. Cooper was at Canutillo when the witness first passed up the valley to Mesilla. Price Cooper's place was very near to New Canutillo and below where New Canutillo now is. At that time Mr. James Magoffin owned the land of Canutillo. He cannot tell how much land there was in that tract but not only Magoffin farmed there but other people in company with Magoffin did some farming. They gathered wood from the Canutillo tract of land and the witness was one of the wood cutters himself at Canutillo for many years, until they got through with the bosque, for about thirteen years and until his house got to be in ruins. They cut all the wood of the bosque. He has known Mr. Van Patten many years and knew him when he was very young before he got married. The witness does not know what Van Patten's business was when he first saw him. And counsel asks if that was before the war, and the witness says of the South and North? And counsel says, yes; and the witness then says, at that time he, Van Patten, was a soldier and belonged to Fountain's Company, Albert Fountain's Company. (It is quite certain that Fountain had no Company until many years after the Civil War and it is not a great many years now since Fountain was murdered by cattle thieves near the white sands, of which some testimony has been given in this case, together with his little boy who was with him.) When the war between the North and the South broke out the witness lived here at Franklin with his mother. He knew when Baylor came with the Texas soldiers and the war was over when he came. He did not do anything. The

witness knew him well here at Franklin. He was an officer, he was a Colonel, but he did not do anything because the war had been ended. That was John Baylor who came after the war. He knew the Baylor who was captain of a Ranger Company here at Franklin before the war between the North and the South. He had already lived at Canutillo and went back there afterwards. He lived at Canutillo for a short time and then came to Franklin to farm when Colonel Wood gave them lands and allowed them to farm in Franklin. Franklin was right here where this city is now. His farm was between the Franklin houses and next to the river and he had a log house there. There was a ford and a ferry on the river between Franklin and Paso del Norte—a canoe ferry. His farm was very near that ford, about 100 or 150 yards. He thinks he could still show where his farm used to be although there are many houses built now by the companies. He knew Josiah Crosby who attended to farming lands. He had his farm at the grant owned by the original purchasers, the Gillettes who bought from the original owner Ponce. Crosby had lands above White's Ranch on that lower road. Crosby's land was quite a distance from Magoffin's land because Crosby's land was on this side of the hills and Magoffin's lands were on the other side and the witness was farming himself at the time that the government confiscated the lands and then there was a change of owners.

On re-direct examination, being asked on which side of the river was Price Cooper's farm, the witness says it was between the two rivers. The old river was towards the rising sun and the new river was towards the setting sun. Before the new river had been made Price Cooper was there raising crops. When he was cutting wood for Cumplido he thinks he was about 30 years old. He was already married and had his family there. It was after the war between the North and the South that he went to

cut wood for Cumplido who is still living. The house of Cumplido is standing there yet. It is to the east side of where the railroad track now is. When the monument was put near the river opposite Dona Ana, he was about 30 years old. He remembers seeing the Mexican Commissioner Salazar at Juarez and he, the witness, was living at Juarez at that time and was between 15 and 20 years old, and that was before he went to Mesilla to live. He saw the monument near Dona Ana but not when they were building it, because he was living at Mesilla at that time. When he first knew the river the new river was on the side of the Island of Garcia towards the setting sun and the old river went around the island on the west side. Being asked if that was the river or only an estero formed when the river was high, he says it was an estero, very large, just like a river, that was left there near the old pueblo by the river. The island from the old town of Amoles was towards the side where the sun rises, about one league distant. The river which ran near the Loma de Arena was the new river. He does not remember when that new river was formed, but it was about the time when the river cut from Mesilla in the direction of the ranch of Guerra's. That was the time when the river came there. It was when the river changed from the east to the west side of Mesilla and it was at that time the old town of Amoles was destroyed by the river, and it was at that time that the river ran down near the Corral de Tapia, and that was a part of the old river that got divided. It was divided opposite the new settlement of La Union and it ran to Canutillo. It was a part of the old river that ran by La Union and that part which ran by La Union ran when the old town of Amoles was destroyed. It did not run there before Amoles was destroyed, but afterwards. It was after Amoles was destroyed that the river began to run near the Piedras Paradas after it got divided. He remembers when Luis Barrio built his house about the month of March or April and it was after the

town of Amoles had been destroyed. The Cuarones were living at El Paso at the time that they were killed by the Indians. They had land cultivated at Picacho, but they retained their residence at El Paso. He knew the road called the Camino Paseno. They crossed the river to get to the Camino Paseno from Piedras Paradas, not very far from Piedras Paradas towards where the sun rises. Going up on the east side of the old river there were fords where they could cross the river and get to the Paseno road. The fords were in the direction of Muleros and Santa Teresa. They used to cross the river above White's Ranch. There was also a ford at Duraznito. Going up the river there were only two roads, and this is in response to a question as to whether there were any more roads than the one that was up in the brush, meaning on the east side, and the Camino Paseno. Being asked how he knows that Santiago Magoffin owned the Canutillo Grant, the witness answers, because he himself told them that he owned the land there when they went to cut wood on his land, and he told them that the people of El Paso were fighting against him trying to take that land away from him. Being asked, if he ever heard that that land had been granted to about 30 people, he answers, that they knew it but the people of El Paso were always fighting against him trying to take that land away from him but they were there representing him. He told them that the father of Santiago had obtained it from Don Jose, but he did not say how. The father of Don Jose was Don Santiago and he was the one who had obtained the land and the witness and Cumplido were representing Don Jose because Don Santiago had already died. He farmed his land at Franklin about four years and had a house on the land. That land did not belong to Mr. Magoffin. His lands were farther down below. Before he had it that land belonged to the Gillettes and it was confiscated because they were southerners. They delivered up the lands and went up to Canutillo to cut wood and delivered

them to Benito Dowell who was the agent for the government in charge of the lands. Crosby's land up the river was near Muleros, above on this side of the river about 200 yards from the house of White. He knew where there were lime kilns near White's Ranch and the lime kiln was not near where Crosby had his land. It was on the other side toward where the sun rises, below. The lime kiln was towards the edge of the hill and Crosby had land on the upper part of the hills. It took part of the hills. Crosby also had land with Don Jose at Canutillo. The witness says he had forgotten about that; and Don Jose remained in possession of the whole thing afterwards, he bought it. Crosby irrigated his land near White's Ranch but did not have a house there. He had no farm he had only bosque. He had no cultivated land. He knew Santiago Lucas who lived on the ranch of Don Esteban Stephenson and Stephenson lived there also. The witness does not remember whether Lucas is a relative of Jesus Arvizu or not. Lucas was an American and for that reason he cannot be a relative. He was married to a lady named Chona, and the witness thinks she was a relative of Jesus Arvizu. (It may be well here to say that "Santiago" is the Spanish form of the name "James".)

On re-cross examination, the witness says that when he first went to Canutillo there was an estero at that place, a great big estero where they watered the stock, that never went dry. He is then asked, if that estero was known as the river-bed of 1826 and he says it was that river. When he first knew it that estero was a good deal larger than this house. It was an estero of the old river and it was an estero in which they watered their stock and got water for themselves and bathed the animals and themselves in it. It was an estero of the old river. He went with Don Eugenio to show the currents of the old river around that neighborhood in June and July and there went with them some other gentlemen who lived at

the same place where he is living now. The surveyor and the clerk who used to write for Don Eugenio, and it seems to him that Mr. Baker is the one who used to write for him. Catarino Martinez, Vicente Garcia, Jose Enriquez were with them and some other men from Chamberino, about six of them were with them. They began to show the old river from Alamitos down and they spent three days including the day that they went home. They went on this side up the road from White's house to where Alamitos is now. They went down on the side where the sun sets. They went from Canutillo to take the outside road. They were in wagons and they got off the wagon at places they were going to see or examine the places. They did not go to Old Amoles. They went to Corral de Trosas and to Corral de Tapia and up to a place called Alamo Naranjo which is on that same property and then turned into the Canutillo road. They spent two days on the west side of the river and two days also on the east side and crossed the river at Piedra de Amolar. He does not know that Don Eugenio is in El Paso now as he left him the night he came at Anthony and has not seen him here. Since we adjourned yesterday no one has talked to him about this trial nor about anything. When he showed the river it was in June or July of last year.

On re-direct examination, the witness says that he was about 20 years old when he was married and was very young. He remembers when some Texan prisoners were brought through Paso del Norte before the war between the United States and Mexico. He did not see them, but he saw the property they burned. They burned some houses in Lincoln. There were some Texans with a man by the name of Kenny with them. Kenny was the captain of that crowd of Texans. The witness was living at Mesilla when they burned that property. At the time of the war between Mexico and the United States he lived in El Paso and was very young, about 8 or 10 years old.

He did not see, before that time some Texans who were prisoners taken by the Mexican authorities. Nobody told him anything about the river of 1826, but he heard it mentioned in those early days. Other people who knew mentioned it. He was very young at that time. And he does not remember who.

At this point counsel for Texas asks that the record show that all of the testimony of this witness except the first direct examination, was given without the aid of the hearing apparatus which he first used and the Attorney General for New Mexico asked also that the record show that it was with great difficulty that the interpreters were able to make him hear and understand the questions, which were frequently repeated many times before he could understand what they were.

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VOL. II, PART ONE

BRIEF FOR COMPLAINANT

In the Supreme Court of the United States

OCTOBER TERM, 1920.

NO. 43 ORIGINAL.

THE STATE OF NEW MEXICO, COMPLAINANT,

vs.

THE STATE OF TEXAS.

IN EQUITY

FRANK W. CLANCY,
Counsel for Complainant.

The Clark Quick-Printing Co., 1332-34 Lawrence St., Denver, Colorado.

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ADDENDUM.

MEANINGS OF SPANISH WORDS.

Abrevadero, a watering place.
Acequia, an irrigation ditch.
Agua, water.
Alamo, a cottonwood tree.
Alamito, diminutive of alamo.
Amolar, to grind.
Amole, soapweed.
Ancon, an open road; a bay; on earth's surface, a place like a bay.
Arena, sand.
Artesa, trough.

Baile, a ball or dance.
Bordo, a bank, as of a ditch, a dyke.
Bravo and brava, wild.
Bruja, a witch.

Cachanilla, I cannot learn what this is, but the testimony indicates that it is some vegetable growth.
Calero, a lime-kiln.
Canaigre, a plant used for tanning.
Canutillo, a small tube or pipe.
Camino, a road.
Ceja, the brow of a hill or mountain.
Cerro, an isolated mountain or hill.
Chapo, of low stature.
Corral, an enclosure for animals.
Cuesta, steep hill.
Cuevas, caves.

Grama, a grass of superior quality.

Jacal, a hut or house made with upright poles.

Laguna, a lake.
Llano, a plain or prairie.
Loma, a hill.

Mansos, tame.
Mayordomo, an overseer or "boss".
Mesquite, a bush which has thorns and produces beans; an Aztec word.
Monte, a mount, but, usually, in New Mexico, woods or brush.

Nuevo, new.

Ollas de agua, water-holes.

Panocha, cone of dark sugar.
Paraje, a stopping place.
Parda, gray.
Paseno, belonging to Paso.
Pelillar, place where pelillo grows.
Pelillo, young grass.
Piloncillo, same as panocha.
Petaca, a trunk.
Playa, a sand bar or stretch of sand left by water, like a beach.
Piedra, a stone or rock.
Piedra de Amolar, a grinding stone.
Piedras Paradas, standing rocks.
Poleo, penny-royal.
Prieto, dark or black.

Remanso, whirlpool.
Rincon, an inside corner, but on earth's surface a piece of low ground entering into hills.

Salitre, ground where there is salt or alkali.
Sanguijuelas, leeches; bloodsuckers.
Sarzo, a frame.
Surumato, name given in contempt to a low class person of the Republic of Mexico.

Tapia, a family name; means mud wall.

Tornillo, a screw; in New Mexico, a tree of hard wood, like mesquite.

Toro, a bull.

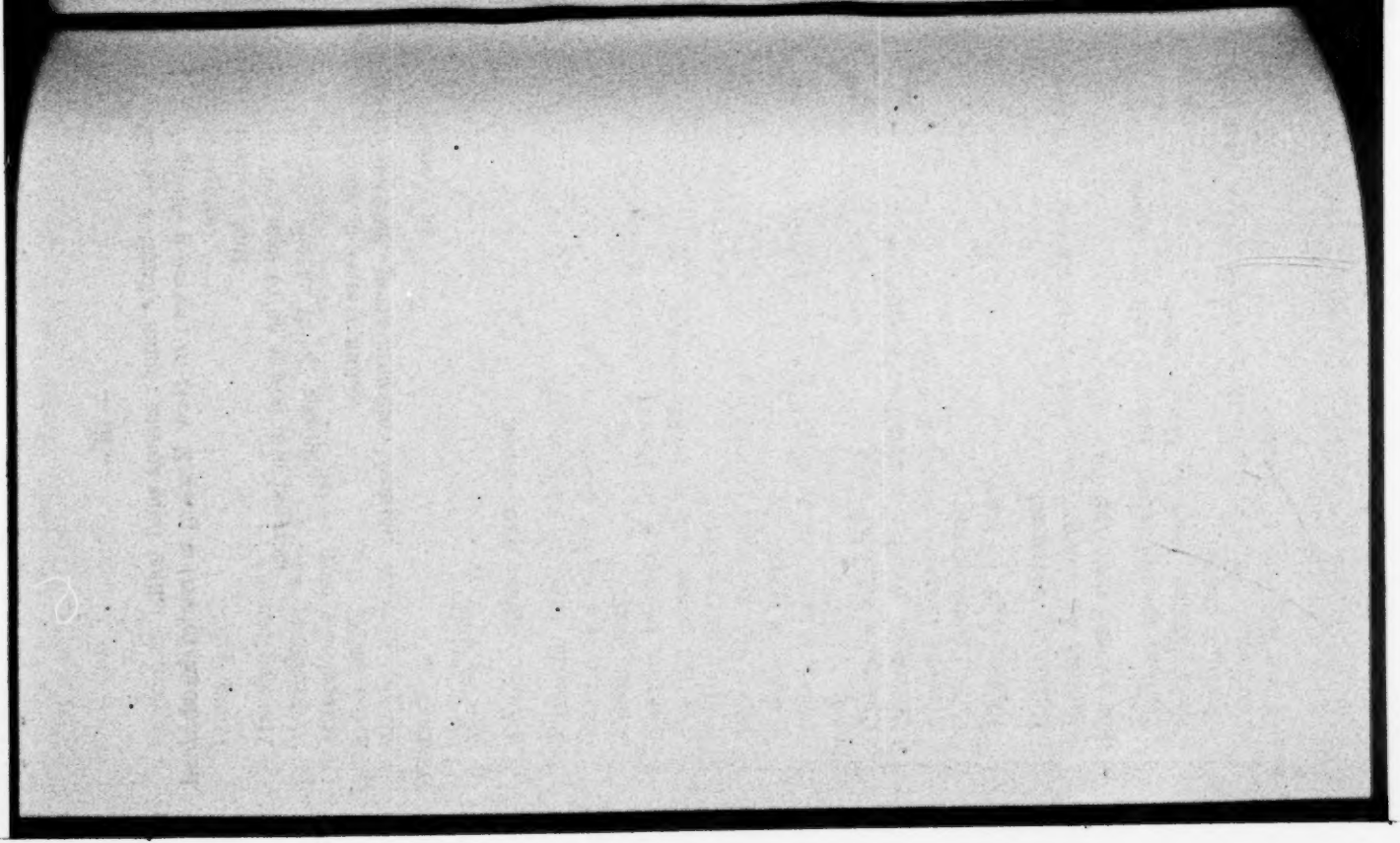
Trosas, logs to be sawed into boards.

Tupido, dense, thick, opaque.

Uranga, a family name.

Uranguena, pertaining to Uranga.

Viejo, old.



Next we have the testimony of

JUAN ALBILLAR

which begins on page 1098.

This witness says that he lives at Chamberino and was born at Ysleta, Texas. He does not remember anything about the war between Mexico and the United States, but he did hear of the battle of Temascalitos. (That battle was in 1846.) When that battle was fought he was at El Paso and was about 18 years old. He was a full grown man at that time and was living in El Paso. He was in El Paso when the soldiers from the North came there. He did not hear who was in command of those soldiers and does not remember that he ever heard the name of Doniphan. Those soldiers went away but he does not know where they went. At that time he was a farmer planting lands belonging to other people on shares. When he left El Paso he went to Mesilla to live and Mesilla had aready been settled for three years. He lived at Mesilla four years. When he went there the first time he traveled on the east side of the river. During the four years that he lived at Mesilla he visited Paso del Norte sometimes, two times each year for pleasure trips and to see his people, and sometimes he used to come to the feasts. The Fiesta of Guadalupe in December and of San Lorenzo in August, and in coming down and returning he traveled on the east side of the river and never traveled on the west side. During those four years he became well acquainted with the road from Mesilla to Paso del Norte on this side. He heard the name of Los Alamitos and saw the place. The river was there. He never stopped there. He used to travel on horseback and not on wagons. When he first saw that place there were no houses there. Later there was a ranch of Jose Cumplido there. He heard of a man named Scott who lived where Anthony is now and he had a cattle ranch. He did not know of his

living at Alamitos. Alamitos is quite far from Anthony, about six miles below Anthony. He has recently visited Alamitos and he went there by himself. He saw this gentleman here, Mr. Chaves, there only. On the day that he saw Mr. Chaves he was at Anthony and when he left Anthony that day he went to Chamberino. Being asked, if he went anywhere with Mr. Chaves from Anthony, he says that he went to the house of the father of Geck. He is then asked, if he knows Eugenio Van Patten, and he says, yes; and then being asked if he was with him and Mr. Chaves at Anthony, he says, yes; and then asked if any one else was with him, he says, yes. He went to Anthony in the company of Don Eugenio in a wagon and got to Anthony about five o'clock in the afternoon and they remained there and in the morning they got something to eat and after breakfast they remained there and they came down to examine the river. They went to a place above Anthony, the place of Scott they used to call it. It is rather far from Anthony. He went there on foot. Being asked, how long it took him to walk up there he says, "From eight o'clock in the morning they arrived at noon". And being asked where they arrived at noon, he says, at the hotel in Anthony. After he went to this place called Scott's place, he went down below, all along the old river. At the place called Scott's the river was to the east and near to that place. When he first knew that place there were a few small trees there, but they are now old like himself. At that place on the other side of the river there was large and small bosque. From that place called Scott's the river ran to the east at that time. Starting from that place the river ran straight for a long distance. He did not notice any bends. The road which he traveled in those early years was on the east side on top of the hills. As he traveled along that road he could see the river. At places the road approached the river and at other places it went away from it. He knew a place called White's Ranch. Between the place which he

called Scott's place and White's Ranch the river ran near to the hills and on the east. When he recently went to show the river he saw a place now called New Canutillo where there is a bridge and when he first knew the river at that place it ran right near the bridge where the bank is. At the place where the bridge is near New Canutillo the road is quite a distance from that place on the hills on the east. From the place which he called Scott's down to White's Ranch the road went all the time on the hills. He heard the name of the place called Old Canutillo and it was quite a distance from the house of Jose Cumplido. The house of Cumplido was on the east side of the river and above Old Canutillo and was where Canutillo Nuevo now is. When he recently revisited the places up the river he was able to point out and show where the river ran when he first knew it and says it is very visible. He saw the Piedras Paradas now that they were visiting them, but not before. When he first went to Mesilla to live Mesilla was on the west side of the river and the river now runs on the west side of Mesilla. He does not remember when the river changed at Mesilla, but he remembers about the change taking place and the cause was, he had an uncle called Juan Pablo Albillar, and the river was up at Picacho, and he constructed a ditch to Mesilla and on account of that ditch the river divided to La Mesa and to La Mesilla and Mesilla remained towards Las Cruces. The river followed the acequia. When it made that change there was much water in the river. It rose suddenly and could not be stopped. He was living at that time at La Mesa. He remembers when the soldiers from Texas came to Mesilla and the change in the river took place before the Texas soldiers came there. He knows that the people tried to put a bordo but they could not stop the river. His uncle built that bordo with all the people who used to work in that kind of work. He knew the old pueblo of Amoles. Jose Maria Garcia and Simon Enriquez lived there and

Don Jesus Enriquez and all his children, and Don Leon Alvarez. There is no town there now. The river drowned it. It was destroyed at the time that the river ran west of Mesilla. From the time that he first knew the river near the hills between Scott's place and White's Ranch until the time when the river changed at Mesilla, there had not been any change in the course of the river. The names of the different places between Scott's place and White's Ranch he does not know.

On cross-examination, the witness says that he does not remember what year it was when he first went up the river, but it was before the flag was raised at Mesilla, about a year, more or less. He passed by Old Amoles before it was destroyed. He went there to attend to some business from La Mesa before the flag was raised at Mesilla. He did not go to any point below Amoles. The people were engaged in farming there and that was the only time he was ever at Amoles. On those trips up and down the river he went on horseback and traveled alone and never with anybody. It would take him two days t make the trips and he would camp at night when it got dark by himself. He was riding a horse. There were more Indians than necessary in the country when he was making these trips on horseback. Being asked in Question 150, if he did not fear these Indians, he answered, "They could not do anything else but kill me". When he first went up the river the mail was carried on horseback and there were no stage coaches at that time. He does not remember how old he was when he first went up the river, but he was a grown man already when he left Paso del Norte. The war between Mexico and the United States was over at that time. He does not know of his own knowledge about the Mexican War. He does not remember after that war when the surveyors came to locate the river and he never heard of them. He does not know when the custom house was at White's Ranch. When he

passed by there, there was nothing there. He passed by there both in the day time and night time. He passed Scott's place in the day time. When he was at Los Amoles the river was to the east and very far from Amoles. He only went to Amoles to attend to some business in the afternoon and went right away. He had business with Mr. Simon Enriquez and he was working for him on the farms at Amoles, outside of the town at the ranch, quite far towards the east, on the east side of the river above Scott's house, very far. It was divided by the river that ran on this side. There were not two rivers, there was only one channel of the river at the same time. He does not know where Jose Maria Garcia lived, but he used to know before where he lived. He says the whole business is different now and being told in Question 185, that without assistance a man cannot locate the old places and the old river-beds, he answers, that certainly with the aid of some persons it would be possible to locate them, but he thinks that he could not without the aid of persons locate the old river-bed in points of sixty odd years ago. Everything is changed and nothing looks as it did when he first saw it. Counsel tells him that nothing looks as it did when he first saw it and the railroad has been built, and the wagon road built, and the river has been changing its channel from time to time, to all of which he answers affirmatively. There are different old channels to the east. Since he went to transact that business at Amoles he has never been back there. It was after the flag was raised that he went there and before the river changed at Mesilla. He does not know when the war occurred between the states of North America. He heard that the Texans came, but he did not see them. He was living at El Paso when the Texans came in and he lived at El Paso all the time until he went to Mesilla. He did not know a man by the name of Price Cooper, nor James Magoffin, nor does he remember when they cleared and cultivated land near Canutillo. He did

not see them. He never saw any farm in the early days near Canutillo. He does not remember when they cut wood on the east side of the river. He cannot tell the date when he knew Cumplido, but he knew him after the Civil War and he was there at the Canutillo ranch. He had a ranch somewhere near Chamberino, which is to the west of Scott's place. When he first knew that place Scott had cattle and Scott kept a post for the mail that ran along on horseback. He does not remember how long afterwards the stage coach came. In those eraly days he never was at Dona Ana and did not hear of the battle of Valverde nor of the battle of Mesilla, and he did not hear of John R. Baylor coming with Texans. And being asked if he ever heard of Major Sibley, says that he did not know anything about that kind of business. He never heard of Major Doniphan and he does not know anything about Doniphan's marching with an army to Chihuahua. His business is farming and he has always been a farmer. He does not know where Fort Fillmore was and never heard of that. He never heard of George Washington. And being asked if he heard of U. S. Grant he says, he has heard the names mentioned now; during the early years nobody ever mentioned those names. He heard the name of Benito Juarez, but never knew him and does not know who he was. And being asked who was Porfirio Diaz, he says, that he does not know those people. He heard his name mentioned, but he does not know him and does not know who he was. He does not know who Francisco I. Madero was and he does not know Villa. He does not know these Mexican people. He knows Don Eugenio Van Patten, and being asked if he is a great man, in question 240, it seems that the question as translated was made to refer to his physical stature because the witness answers, that, Van Patten is neither tall nor short of stature, he is regular size. He is then asked what is Van Patten's business, and he answers, that he is attending to this business about locating the old river.

And being asked, if that is his principal business, he says, he does not know whether that is his first or second or third business, and he does not know how many other businesses he has. The witness has had dealings with him in regard to locating the old river and says it may be that he is anxious to locate the old river and he invited him towards that end. Counsel then asks him, where does Van Patten want to locate the old river? And the witness answers, where it used to run in the early days, wherever that may be. The witness did not know about Alamitos and does not know the names of those places. In those early times there was no Montoya of any kind. It is now that he has heard the name called. In traveling horseback he always traveled the east road on the hills. The road up on the hills was near the valley and the river, it went all along the hills. He does not remember when he ceased to travel this road on horseback. He is then led to say that he ceased to travel that road before the flag was raised and if the flag was raised in '54 that he never traveled that road after that and that he never came to Paso del Norte after the flag was raised and that he has never been back to Paso del Norte until now since the flag was raised. All this city has not been built since he ceased to come to Paso del Norte and he cannot tell the date when he saw this place first. He does not know when the railroad was built to El Paso and he did not see them building that railroad. He was living at La Mesa when they built the railroad which is quite far from the line of the railroad. Being asked, if they could build that railroad and he not see them, he answers, "I did not". He then is led to say that he never rode on a railroad train, but he came this last time on the train and Don Eugenio had him come. He does not know whether Don Eugenio is an officer or not. He invited him in a friendly way. The witness went to show him the river on the 20th of December a little less than a month ago. He does not remember how many people

went, no Americans. They were in two wagons. Sometimes there was nobody in the wagons. Don Eugenio was along but the witness cannot tell whether he is an American or a Mexican, he speaks Spanish very well. Mr. Chaves was along and Mr. Baker was along, and the witness does not know if he is an American. Mr. Reber was along and maybe he is an American, he talks Castilian which is Spanish. Mr. Baker talks Castilian and Mexican and the witness thinks he talks Portuguese too. They first stopped at Anthony and then went along following the old river. Don Eugenio conducted them to those places and he was an old settler. He knew the old river very well because he used to carry the mail on horseback in those early days and he could tell anyone where the old river was. He was there and they themselves saw the channel of the river. They did not follow a line of stakes. He did not see any alfalfa growing there. From the point above Anthony down this way he did not walk through fields. There are some houses now where the old river ran to the west but before that there were no houses, there was only Scott's Post. He saw an irrigation canal to the east from the river. Question 309 is "When the ditch ran there, there was no water in the river?" And he answers, "No, sir". But this means a denial of the statement contained in the question and not an acquiescence in it, and the attention of the court is called to what appears near the foot of page 1105 on the subject of "Yes, sir" and "No, sir" by the witness. It was Scott that built that ditch and they wanted to irrigate lands from Anthony down but they could not because the river rose and washed the ditch banks away. He saw them when they were building that ditch. When he traveled up and down the river there was only the ranch of Don Jose Cumplido along the east bank of the river. Cumplido was there when the witness first went up, and was in charge of a ranch belonging to Don Ramon Gonzales. Gonzales had no land there it was a cow ranch, to the

east of the river where Canutillo is now and on the height. The cattle grazed toward the mountains to the east. He cannot tell the number of cattle but Gonzales had cattle and horses. He had the ranch where the grant of Canutillo is now. Cumplido is still there and is a little younger than the witness. If he has any sons, the witness does not know them. He does not know that he cultivated any land, he had only a cow ranch there. He lived there before the flag was raised at Mesilla and afterwards, even up to the present time and the witness has seen him recently. After the flag was raised at Mesilla he did not see him at Canutillo, but he saw him at Mesilla. In the party that went with him to show the river it may be there were six or eight, and being asked to name as many as he can, he says, one is called Antonio Lucero, another Jesus Arvizu, and he does not remember the names of the others. He knew more than two, that is, if he sees them he knows them. Another one was Jose Garcia, Valentin Abalos another. He was in company of the men whose names he does not remember for three days. They were at the bend of Piedra de Amolar and then they went to Piedras Paradas and to Canutillo. They got to Piedras Paradas without going to Canutillo first because they turned back from Piedra de Amolar on the bridge. In coming to Piedra de Amolar he did not come down the wagon road from Anthony but all along the old river, and at several places they came on the wagon road and at other places they would follow the old river. The first day at noon they camped at Anthony and the night of that day at Vinton. The weather was very bad, it was raining and snowing. On Christmas Day he was at Chamberino and he went back to his house on the 21st. After spending the night at Vinton he cannot tell what they did the next day, he does not remember. After they slept that night there they came down to Piedra de Amolar to the house that is there above the bridge. From Vinton down to that place they traveled most of the distance on foot

and in the wagon through the woods along the old river. There are no lands there, no farms. Vinton is to the east of the railroad. The road which he traveled on horseback in the early days is about 50 yards from where Vinton is now. He never heard La Bruja mentioned at all in the early days, but he heard of Canutillo because there was the ranch of Jose Cumplido; and he never heard of Doroteo Salado. He never knew of anyone living between White's Ranch and where Anthony now is until Cumplido came there to live. When he was riding horseback up and down the river he knew the river and always traveled the hill road and he did not know the valley road. He traveled on the road and never by trail. He knew an estero where New Canutillo is off to Old Canutillo and it extended to Old Canutillo. It occupied that whole length of the river where it went towards the east, near the hills, and from his first trip that estero was there and when the river came down it was clear. The river had a channel. White's house was to the east of the railroad track as it now exists, about 50 yards distant. The new road is east of the railroad track at White's house and the road as it is now, is east of the house. When he was there recently he saw several piles of stone and one of those piles represents where White's house stood. Being asked why they went to Piedras Paradas, he answers, to know how the river runs now. And he is then asked, why did he want to know, or why did they want to know how the river runs now, and he answers, "That I do not know". He is then asked in Question 392, if he followed the present river from Canutillo down to Piedras Paradas to see how it runs now, and he answers, yes, sir, and followed it on foot. (There is clearly some misunderstanding here, as the Canutillos he and all of the other witnesses testified about, are on the east side of the river, while the Piedras Paradas are on the other side of the river.) There is a bridge now above White's old house but in the early days there was no bridge. Just below that bridge there

is not a farm and he did not see anything like that with a farm house and cottonwood trees around it, and he did not see a corn field below that bridge, and he did not see below that bridge a farm which reaches from the railroad track to the present river. In the early days there was no bridge any place across the river. When he first knew the river it had great floods up to the 15th day of May. They lasted from the beginning of April to the month of May and the water spread through the valley and overflowed the channel of the river and carried away the cottonwoods. In those early days he heard Duraznito mentioned, but he did not know the place and never saw the peach tree. When he traveled horseback in those early days, he stopped at Scott's ranch which was the only post that there was. The main wagon road was near the house. Between White's Ranch and Scott's place, in parts the river was crooked and in parts it was straight. There were crooked parts at Canutillo Nuevo and it can be seen even today. Everything at Scott's place was bosque on the west side of the river. He did not see any bosque on the east side. Being asked, how far above Piedras Paradas he went when he crossed the bridge and went on the west side, he says, that he went to Piedras Paradas and he did not know the place before. He is then asked, where he went with the men to show the river above that point of Piedras Paradas, and he answers, to Canutillo. And counsel then in Question 423 says, "I mean on the west side?" (This shows the correctness of what has already been stated, that Canutillo is on the east side of the river.) They went up to Corral de Tapia and above, and they went to Corral de Trosas, and then they went to Canutillo turning back east and stayed that night at Canutillo Nuevo. After he had shown the river he made a declaration at Canutillo to Don Eugenio who took it down in writing. He did not take an oath and he gave no other declaration at any time.

On re-direct examination, he says, that after he lived four years at Mesilla he went to La Mesa and lived there until he went to Chamberino where he now lives. He lived at La Mesa four years and he visited Paso del Norte one time while he was living at La Mesa and one time after he moved to Chamberino. He then says that he visited Paso del Norte twice while he lived at La Mesa, and while he lived at Mesilla he went to Paso del Norte twice in each year. The acequia at or near Scott's place was made by Scott himself to irrigate a garden. He made it. He may have paid somebody to help him. The witness did not hear of twenty or thirty men making an acequia near that place to irrigate land in the vicinity of where Anthony now is. While he lived at Mesilla he knew a place called Brazito and at that time there were houses there and there was a government fort near that place—Brazito was the name of the fort, and he never heard it called by any other name, and never heard of Fort Fillmore. The road which he traveled on horseback went to the fort at Brazito and he did not hear the road called by any name. In Question 461, he is asked whether when he went to show the river to those other people, if he pointed out the river to them or did they point it out to him, and he answers, that he showed it to them. He worked for Simon Enriquez on one of his farms for a few days only, at the bosque below Old Amoles. He built for him a jacal in which to store corn and that jacal was very far from the river which was on the east at that time, to the east of the jacal. The estero which extended from Canutillo Nuevo to Canutillo Viejo was so near the hills that there could be no road there and was to the east of where the railroad now runs. The river was near the estero and when the river rose it formed that estero. When the river was low it took its natural channel. He does not remember at El Paso seeing Texans who went through there as prisoners.

On re-cross examination, counsel asks him about the place where he worked for Simon Enriquez, whether it was above Scott's house or below Amoles, and he says, it was above, to the west.

Next we have the testimony of

DIONICIO PARRA

which begins on page 1123.

This witness lives at Las Cruces and was born at Casas Grandes in Mexico, where the Indians captured him at the age of about ten years and took him away with them. He says they were gathering corn when the Indians attacked them, and his uncle covered him with a pile of corn shucks and an Indian stepped on top of him and grabbed him and took him away. They killed a great many at that time. An Indian put him behind the saddle of another Indian on a horse. They were Apache Indians and Costales was the name of the chief. They were from this region above here (pointing northward). They took him by a canon to the Florida mountains, near Deming. He got away from the Indians when he was about seventeen. He was then entirely free and was committing depredations just as they were. He was stealing just as much as they did by himself. He left them at Santa Barbara, which is in front of Las Cruces and he went to Mesilla where he arrived at a corn field and as he was just like an Apache yet, he imagined that corn belonged to him and he began to roast corn. He had two horses. He delivered the horses at Mesilla to Don Rafael Ruelas. Meregildo Guerra took him as a prisoner and turned him over to the president of Mesilla, which at that time belonged to Mexico, and the president was Rafael Ruelas, and he kept him in his house where there was a relative by the name of Manuel Parra who was working there. He was older than the witness. He remained at Mesilla four years, but was not there all the time. He

went about wherever he could get work, sometimes at Mesilla and sometimes at other places. He worked in cutting wood and in the farms. When he arrived at Mesilla there were only jacales there, the settlement was being formed, and when the American flag was raised at Mesilla he had recently arrived from San Antonio Bexar in Texas. He had been working with a wagon train of Santiago Magoffin who lived below here. People used to procure him to work for them because they knew he had been in the hands of the Apaches at one time. After he had been at Mesilla four years he went to San Antonio on the first trip and on his return from that first trip was the time the flag was raised at Mesilla. He started with the wagon train of Magoffin from the fort of Brazito, which was called Fort Fillmore. When he started from there he came down to Paso del Norte and had been down there once before and traveled on this side of the river, on which he has always traveled. After that he made a great many trips up and down the river and cannot tell how many. He became well acquainted with the river from Fort Fillmore to Paso del Norte and he knew a place called Alamitos which was a watering place for the wagons and nearby was a ranch. He took two months to go to San Antonio and he came back with the same train. His uncles were working there, also. In these early days he did not know a man named Hayward, but he knew a man named McGrorty who lived at Fort Fillmore and had a very large store, and he had a partner named George. McGrorty had wagons and always had him working in the house and he worked four or five years in the house. Martin Amador was working there also but he is dead. Alamitos was on this side of the river, close to the hills. And being asked how near was the river to Alamitos, he says, there is one of the old trees there yet and it was about 17 or 18 yards from that tree to the river. He has recently revisited that place, and being shown plaintiff's Exhibit No. 7, he says, this is the river.

And being asked, if he recognizes the big tree, he says, the tree is very thick but it has not these side branches, it has very long roots. There is a willow tree beyond there, on the edge of the bank. There is a willow tree that was not there before. He then says, he has been sick all morning and has a pain in the stomach but he is taking some medicine which has relieved him and he feels a little better now. When he left Mesilla he went to Picacho to live and got married there and lived there about four or five years. From the place called Alamitos from where the bed of the river is now it ran down by the edge of Anthony and from there down to where there is a white house and some trees now and an orchard by the house. It is full of trees all about there now. The river forms a bend up near this tree and there you can see the bend of the old river and it goes towards the depot. Below where the depot now is, he is asked, how did the river run when he first knew it, and he says, he does not know the directions but he is trying to point to where it ran. He says he does not know which is east and which is west and for that reason he has been trying to point with his hand. In that bend a little piece ran towards where the railroad is now and the river went to where there were two cottonwood trees, right close to the track now. The trees are there now. From where those trees were the river ran below, right by the edge of the railroad track, right where the railroad track is now. He knew the Calero de Gualdarama. When he first knew the river, it passed not very near and yet not very far from the Calero. From there it went down, but it did not have any more bends. He knows the place now called Vinton. There was not any bend in the river near that place, when he first knew it, but the river ran rather more towards the hills. He never knew the Arroyo de Artesa or the Bosque de Artesa. He knows the place now called New Canutillo near which there is a bridge and the road from there went over the hills to a place where there is now a new saloon.

Near New Canutillo where the bridge is, the river went close to where the track is now. At that time there was no railroad. All the way from Canutillo Nuevo down to that new house on top of the hills there were esteros. He does not remember any estero above the place now called New Canutillo. The estero below New Canutillo was long and was right close to the hills all the time. When the river was high it overflowed into the estero. There was no railroad track at that time. The witness is then shown photographs which are plaintiff's Exhibits 8 and 9, and he says, as to the first one, that it is the tree standing at Alamitos. It is there now; and as to the second one, he says, it is the same as the other. The witness knew Doroteo Salado and he lived at Canutillo Viejo on this side of the river. He has recently revisited that place. He found the place where Salado lived and the ruins of the little jacal are there yet. He does not know exactly how near was the river to that house. It might have been fifty feet, more or less, it was very near. That place is towards the sunset from the present railroad, not far from the railroad. He knew the place called Duraznito and it was so called because somebody must have dropped a peach stone there and it came up and grew until it bore fruit. The peach tree was very near the river, not more than 200 feet from the bank of the river. The river was very wide at that point, but the deepest part was towards the side of Duraznito, towards where the sun rises. There were two branches of the river near where Salado lived, but the largest branch and the main channel was close to Salado's house. The other was a small branch which ran like a ditch on the side towards where the sun sets. He does not know whether those two branches came together below. From the side of the hills there was a little place where the water used to seep from under the hills and it had clear water. It was small. He knew the place called White's Ranch in those early years. From Duraznito the river ran straight to White's Ranch near

to the hills. The river was about 150 feet from White's Ranch when he first knew it. White's Ranch was on top of the height and the ruin of the house is there yet. Being asked, if he knew the Piedras de Amolar, he says, they did not call them by that name but they called that place the whirlpool of Piedra de Amolar, which was in the direction of El Paso from White's Ranch, and from White's Ranch to the whirlpool the river ran straight, leaning towards the hills. He was there recently showing these places and he was ahead. He was able to find the old bed of the river from Alamitos down to where that whirlpool used to be, and he says for that reason he went there himself so as not to tell a lie. They followed the old river from Alamitos down to where the whirlpool was on foot. He did not walk all the way on foot from Alamitos to White's Ranch. After leaving the brick kilns he went for a while in the wagon because he could not walk any more on account of his legs. From Vinton he thinks he rode for about three miles only in the wagon, as far as Canutillo Nuevo they went and they got off the wagon at New Canutillo and slept there. The next morning from there he went ahead on foot, again in the lead, and went from the place he started down to where he came to the bordo that has been built there. It is at the old brick kiln and was built there to throw the river to the other side of the valley. He did not notice any side track in the vicinity of that bordo. Where the old brick kiln is the river, when he first knew it, ran right there by and over the houses it used to pass. Between New Canutillo and Old Canutillo the river, when he first knew it, ran right where the track is, by the side of the hills. At New Canutillo the old wagon road that he first traveled was up in this direction and then made a turn on top of the hills and crossed some arroyos. From Canutillo Viejo down to Duraznito, the old wagon road ran on the top of the hills. From Duraznito to White's Ranch the road was always on the hills. One road started

from Alamitos and goes through the puerto to the other side of the mountains, but the road from Alamitos to where New Canutillo now is went right along the edge of the hills, more on top of the hills than below. It crossed a good many arroyos. When it rained a good deal in the arroyos the current was so strong that it would nearly up-set the wagon. The road kept up on the hills on account of the sand and clay places below. The name was barriales which is very sticky mud, and there was gravel above and the wagons could travel very well. Between White's Ranch and Alamitos there was a road that came down below the hills on desechos, cut-offs below. Those cut-offs and sandy places were always on the same road. He does not know the name of the road but it went to Fort Fillmore. Some of the ruins of the road are there yet. When he recently went there he saw several of the remains of that old road. In the early days he did not travel any on the west side of the river. From El Paso he went to the canoncitos to a sandy hill to cut wood and went with the wagons of Don Guadalupe Miranda to cut wood on the west side of the river. On that side there was a great deal of wood. They used to go one day and return the next, each peon with a wagon because the road was very heavy. He did not know the place called Muleros. When he went after wood he did not go past Piedras Paradas but you could see them, a long distance from the river. He never saw the old town of Amoles. He did see people cutting wood and bringing it down the river in rafts and he took part in that sort of work. They cut wood on some very sandy places there of which he does not know the name. They used to cut wood there and haul it down the river to El Paso. They cut wood and put it in the river higher up than where Canutillo now is. All that they cut on the west side of the river was below Dos Alamos or Tres Alamos. There was a great deal of bosque on the west side of the river. They used to cut it in the winter so that it might be

dry by summer. He went about three times, not to cut the wood but to bring it down. He used to haul it in wagons. At one time a man got sick and the foreman put him in charge of a raft and he lost it at the whirlpool where the machinery of the smelter is now. The whole thing disappeared, blankets, rifles, and everything, and they never saw it again. As soon as he lost control he jumped into the water and swam away to the side where the dam of El Paso was. That whirlpool was larger than the one at Piedra de Amolar, which was a small and very short one. From the wagon road along on the hills between Alamitos and White's Ranch he could see the river, it was very near. There were some places where it could not be seen because the bosque obstructed the view. There was bosque on both sides of the river. The channel was rather deep at places and the trees obstructed the view. There were cottonwood trees on both sides of the river. There was much bosque on the east side of the river but more on the other side. When he visited those places recently he was able to find the old bed of the river between Alamitos and White's Ranch. You can see the banks of the river on the other side and this side. Nobody told him where the river was. He knew and would not let anybody tell him. He was away ahead, in the lead, examining the places where they were. There is no water now at Alamitos, the river passes away off on the side of Amoles and La Union. He thinks the river may have left that place in '51 or '54, he does not remember. The river was on the side of Mesilla towards Las Cruces, when he first knew that place. It was between Mesilla and Las Cruces. Now it is on the other side of Mesilla, in the hills. He was not here when the river changed over to the west side of Mesilla. He was a soldier then in the regiment of Kit Carson and Jose Francisco Chaves during the war against the Navajoes, when the Mexicans went to fight the Navajoes. He served three years as a soldier and was discharged at Fort Selden.

He says he was in near all the campaigns against the Texans, but before the battle of Valverde he was with the militia. Afterwards he enlisted as a soldier. He did not want to but they took him in, they forced him to become a soldier, they ordered him to become a soldier. He gets a pension, and after he was discharged and came back the river had changed to the west side of Mesilla. Before he went away to be a soldier the river had not left Alamitos. Before he went away as a soldier the river ran always by White's Ranch and it ran over the same old river-bed that is there now between Alamitos and White's Ranch. When the soldiers from Texas came to Mesilla he was there. They came in '61 and went back in '61. They were not there quite one year. In '62 they had already left. He left because the Texans were trying to kill him and he went to New Mexico. When the Texans came to the fort they found him there taking care of a store at Fort Fillmore. He then went to Paraje in Socorro County. He did not return to Mesilla before he became a soldier. The road from Alamitos to the puerto goes to New Mexico and comes to this place also. The puerto is in the mountains and the road went by the place where the soldiers marched. That road comes down here to El Paso, to this fort out here (pointing easterly in the direction of Fort Bliss).

On cross-examination, he says that in hauling freight from San Antonio, Texas, to Fort Fillmore, he did not go through the puerto in those mountains, but took the straight road which went by Soledad, which is a very flat place on top of the hills, which the people of Mesilla call the Majada de la Vieja. He made only two trips with freight by that place. The road went to the east side of the mountains and came over to the valley at a place called Ollas de Agua—the water holes. All told he made about four freighting trips, when his boss left him to take care of the house in company with Don Martin

Amador. He did freighting all the time, he has not been able to work inside of the houses. He gets sick when he works inside of houses. Before he was a soldier he made those four trips and he did not go back freighting any more. When the soldiers of the South came marching along he was ahead of them with the wagons. It took two months for each trip and after he had finished one trip he would start right away on another, and the trains of Magoffin did not ever stop in this place here, they were on the road all of the time. He crossed the Pecos river when he was freighting for Magoffin, in front of Las Uvas. He does not know what the name of the crossing was, but he remembers that at the crossing a Frenchman died because he ate a rattle-snake. He used to tell that man not to eat any rattle-snakes, that he might die, but he said that he was used to eating rattle-snakes and he got one and roasted it and put salt on it twice and ate it and died. The foreman of the train was asleep when this happened and when he got up the Frenchman was dead. He bursted, his stomach burst right away, and they placed at that place a very large slab of stone which the foreman made them haul with mules. There was a good deal of rock in the river and it was difficult for the mules to cross, they fell down as they crossed. He is then asked in Question 246, if that place was called Horse head Crossing, and he says, he does not remember the name, but if he is asked about the road ahead he can tell every place in it. Counsel for the defendant then takes the witness over the road evidently as far as he himself knew it and apparently the witness detailed a number of places along the road to the satisfaction of counsel, on pages 1139 and 1140 of the record. When he lived at Juarez and rafted wood he had not been a soldier, it was yet when he was very young. He says that when he came to Juarez he was fond of dancing and did not have any money to dance with and went to work for Don Guadalupe Miranda for about two months. He is then

told by counsel in Question 268, that he said awhile ago that he helped bring down three rafts, and he answers, that he repeats again that he only helped with one of the rafts which drowned in the river. And being further asked about it, he says, that what he said was that he was hauling wood in wagons when one of the men in charge of the rafts got sick and his foreman put him in his place. He took charge of it and brought it down the river and lost it. He went to haul wood in wagons to the river three times. He was 17 years old and had just left the Apaches when he first knew Santiago Magoffin. He never lived at Magoffinville and when Magoffin employed them to freight they used to go to the place only on those occasions. He never lived at Ysleta, Texas. If he knew Price Cooper in those early days, he does not remember. He knew two brothers, Anastacio and Jose Cumplido, and they were teamsters with him. At that ranch which they now call New Canutillo one of these Cumplidos is living there now. He does not remember that in the early times they had a farm at that place and he does not remember if Santiago Magoffin had any lands above White's Ranch. Not long ago they made a ditch near Canutillo and irrigated some lands below. They built the ditch on the west side of the river to irrigate lands at Canutillo Viejo about ten years ago and at that time he was living in Las Cruces. Being asked, if in the early days he did not see people farming land near where Old Canutillo is, he answers, that he did not pay any attention, that he traveled that road sometimes during the day and sometimes during the night with his little wagon. While freighting for Magoffin he did not see men clearing the land. He traveled with his little wagon after he traveled with the freight wagons. He did not know of a place called Fronteras. He does not remember if there was a custom house at White's Ranch. He knew the house, but he did not know White. He had not gone before the witness knew the house and was living right there at his

own house. He cannot tell how long White lived there because when he went back with his little wagon he saw some Mexicans living at the house. He does not remember in '51 and '52 when surveyors came representing Mexico and the United States to survey the river. He was not here then. From Picacho he moved to San Vicente in '71 and came back in '94. Being asked in Question 297, if he had been making trips down this way from Mesilla before he went to San Vicente in '71, he says, he lived at Picacho and never made any more trips. From the time he was not able to work he was a peddler going from town to town selling goods. He lived at Picacho from '67 to '69. Before he went to Picacho he was traveling around the country selling things and wherever the night caught him, he stopped there. He does not remember how many years he was engaged in that before '67. When he first got married at Picacho and had a family he started into that business. He left the army in '67 and got married in the same year. When the Texans came he was living nowhere, he had been living at Fort Fillmore about six months. Before going to Fort Fillmore at times he lived at Mesilla, sometimes at El Paso, sometimes at Dona Ana. He had no particular place or residence because he was then all by himself. In '86 he lived at Dona Ana perhaps a week, two weeks or a month. He did not see a monument at Dona Ana. He never heard of a surveyor representing Mexico by the name of Salazar and never heard of surveyors locating the river above White's Ranch, and he never saw any surveyors and soldiers camped at White's Ranch or above there. He says that maybe it was during the time that he came from Chihuahua with goods that he took up to Socorro and those little towns around there, during which time he stayed about a year. He was in Chihuahua the same year that he was in Picacho and went with an uncle of his to bring some goods. He does not know what year that was, but it was long after he was a soldier. After

he ceased to be a soldier he used to come every year, two years, six months or every three months, as he was able to come, to Paso del Norte. The first year after he ceased to be a soldier he came to Paso del Norte many times. He found the river next to the hills. It remained next to the hills long after he was a soldier and it was about one year or two years that he used to come down. He says the Texans must have been away at their homes then. He is then asked in Question 326, "It was two or three or four years after the Texans had gone?" And he answers, "Yes, sir". He is then asked who was commanding the Texans, and he says he did not pay any attention to those people because they wanted to hang him and he was running away from them at that time, and he was running away because they found him taking care of the store of Mr. McGrorty at Fort Fillmore and he was hiding from the Texans about two months and a half. Before he went to freighting for Magoffin, he made only one trip down the valley in a little wagon, coming to the feast in December on the day of Guadalupe. He slept on the other side of Canutillo and did not travel any at night. He camped on the edge of the hills near the water. Where this town now is it was then called Franklin and he knew Magoffinville where the fort was. In going to San Antonio he went by Ysleta and Socorro. He was taking care of the mules and was foreman of those who were driving the mules. From Socorro eastward they went by the old main road. At this point on pages 1145 to 1147, counsel resumes the catechism of the witness as to places on another portion of the road going to San Antonio. He first knew Eugenio Van Patten when he was Colonel of the militia men at Las Cruces and that was after he had been stage conductor. He thinks the stage line was running to San Antonio when he went with the mules, but he only saw that line running from Las Cruces to Franklin here. He did not know Simon Enriquez. He heard the name of Jose Maria Garcia, but he did not

know him and he does not remember where he lived. He heard the name of Jose Maria Garcia only. Below Dos Alamos the river made a half bend or turn, but it was not a big bend. There was bosque in that bend. The peach tree was near the edge of the hills on the other side of the railroad track. In the early days when he first knew the river, it was subject to great overflows and when the big floods came the water went all off towards the other side. He did not know the beaver dam. The Frenchman who died at the Pecos crossing bursted open right away after he ate the snake the same as if he had dynamite or poison because immediately after he ate the snake he bursted, his stomach bursted all open as if it was done with shot, nothing was left inside of him. Indians do not eat rattle-snakes. Being asked, how he knows how old he was when the Indians captured him, he says, he knows because he was ten years old when they brought him from his home and he was with the Indians seven years more and because afterwards when he had to make an application to the United States government for a pension he sent home for his certificate of baptism which he has now at home and that certificate says that he was born in February in the year 1833. He does not know about what it says as to his age when he was baptized. All he knows is what those who have read it have told him. He could not read it himself. When he was with the Indians he did not fight, neither with the Americans or Mexicans. When they took ranches or parties he was always put in charge of the plunder and when they got through with it they always sent him ahead. For that reason he never fought. They took the stock and plunder from the Mexicans. Being told in Question 398, that he did not fight the Mexicans, he answers, "When they used to catch me, I was forced to fight with them". The chief of the tribe he was with was Costales and he spent the seven years in Sonora. From three to four hundred Indians were campaigning in Sonora. In the early years

he never went to Amoles and never traveled on that side of the valley, only up to the place that he has already said he went to, to haul wood to the river. They got the wood where Piedras Paradas were and hauled the wood from that direction towards the edge of the river. The Piedras Paradas were very far from the river. When he first knew Cumplido he was a teamster and was living here in El Paso. He knew of his living above White's Ranch afterwards. There were two of that name, Anastacio and the other who lives there, Jose. The two were teamsters at the same time that he himself was a teamster. When he was freighting for Magoffin they did not live in the valley above White's Ranch yet. He first knew of Salado living up there on the first trip that he made from Las Cruces to El Paso to buy goods and go to sell them and that was after he had been a freighter for Magoffin. He does not know if Salado had lived there before that time. He did not know Gualdarama. There is a house now that they say was Gualdarama's, but he does not know whether it was or not. When he went to show the river with Mr. Van Patten it was the other day and it must be December. The other time he came with them he showed them where the river used to run and where the river made some bends and where Salado lived and Don Agapito Rival lived, a man who acted as a doctor and was an Indian. Rival lived in a jacal near where the Salado jacal was. He saw him afterwards there when he built a little jacal. Salado did not go away from there, he died there. Salado and Agapito were there together. This Indian doctor used to come to El Paso to treat people with herbs and other things. He healed wounds and he used to suck the blood from the wounds with his mouth. He used to come here to treat people but the fact is that he lived above. Nobody but the doctor and Salado lived in that neighborhood. Being asked, if the doctor had a farm there, the witness says, he did not pay any attention as he only passed by

those places. They were friends and were acquainted and he used to come out from his house to talk to the witness as he passed by. The road was near by. Where Salado lived there is no valley, all of the valley there was towards the river. Being asked, how far was the furthest place that the stage road reached from a point on the river, the witness says at Canutillo Nuevo and that was the longest place that the road was from the river. It was about 2,000 varas in parts of the road and in parts it was longer because the road was making bends all the way through. He did not know the place called Uranguena and he did not know the Estero de Frijol. Being asked, if he remembers an estero that went by Canutillo Viejo in Question 437, he says, it was not an estero, it was a bend that the river made where there were some tules. At the place they called Duraznito the present river runs to the other side about two or three miles, into the bosque. He visited the river twice to show it to these men. The first time was last month and the second time was now that he is here. The first time they started from Anthony and camped that night at Vinton. He went twice because some places he did not remember very well where the river used to run and it was so long that the river ran there that he wanted to be sure and certain of what his testimony would be here as he has come here to tell the truth and not earn his money for nothing. Being asked how he knew the old river better the second time than he did the first time, he says, they met him in town and wanted him to go and show the river and he told them he wanted to be sure as it had been a long time since the river ran there. He knew it better the second time than he did the first because he remembered better in his mind and knew better at that time. He did not find as he went down the channel of the river any stakes and did not see any stakes. He found what he thought was an old river-bed which was at that time deep but now it is almost level at the present time. Floods have

not been in that place in the last few years because the arroyos and the farming land have not been washed over. The bordo at the place where there is an old abandoned brick yard above White's Ranch he spoke of yesterday because he saw it and last year it was new. When it was put there the water destroyed most of the farming land. He does not know what year the bordos were put there. He saw them the first time four or five years ago. They were put there to keep the river from the farming land and from around those houses and brick yards. The floods cut up the bordos and did not make a channel. The water only came and spread out and that was away from the river. At that time the river was where it is running now and he is sure of that. He cannot tell where the court house for El Paso County was when he went freighting for Magoffin the first time because at that time he did not know what a court house was. He knew other Americans besides Magoffin, he knew Mr. Henry Corlew and the son of James Magoffin who he thinks is a Mexican, he is named Jose and he was very young when the witness went freighting first, but he knew him at that time.

On re-direct examination, he says that after he returned from being a soldier he did not find the river running near Alamitos and the river ran a little towards the side of the setting sun, near Duraznito. When he first knew Mesilla and Las Cruces the mail was carried from Paso del Norte to those places with carriages, with large carriages. When he visited the old river recently he did not travel over the old road, but only saw the direction where it used to be from the new road. He showed them the old road at some places, portions of the old road. He passed the place called Las Limpias twice and soldiers were camped there both times. This was when he was going to San Antonio. He went to San Antonio two times so that he passed that place four different times.

On re-cross examination, he says that he did not know John and Henry Gillette or either of them, or Sam or John Schutz, nor Ben Dowell. When he was freighting from San Antonio there was no railroad from that place to the east. The goods were brought to San Antonio from Port & Lavaca. Freighters went after the goods in wagons. He passed Las Limpias on two round trips.

On re-direct examination, he says that he knew Santiago Lucas who lived at one time at Las Cruces and he knew Rodrigo Ruelas who was a son of Rafael Ruelas, who was the president at Mesilla when the witness was first there.

At this point on page 1155 the Attorney General for New Mexico said, "That is all", to which the witness responded "Thank God".

We come now to the testimony of

DOLORES ALEJO

which begins on page 1155 of the record.

On direct examination, he says that he lives now at Las Cruces, but he lived a good deal more of the time at Doña Ana. He moved from Dona Ana to Las Cruces about fifteen years ago. Before he lived in Dona Ana he lived at Senecu', near El Paso, where he was born and when he went up to Dona Ana he was about eighteen years old. He knew something about the raising of the flag at Mesilla. He came to Dona Ana to live after the flag was raised at Mesilla, but he cannot tell how long afterwards. When he went to Dona Ana to live was a long time after the flag was raised at Mesilla because he was already grown up. He heard something about the war between Mexico and the United States, although he was very young and was then living at Senecu'. He saw some of the soldiers from the United States at Paso

del Norte, but he does not remember in what month or season of the year it was as he was very young. He heard something about the battle at Brazito from men who went there. He cannot tell how old he was when he heard about that battle at Brazito. He was very young and only remembers of that occasion as though it were a dream. Before he went to Dona Ana to live when he was 18 years old, he had been before that time both at Mesilla and at Dona Ana. When they went there it was about that time that the flag was raised. He was at Senecu' when he heard that the flag had been raised at Mesilla and that was after he made his first visit up there. When he went that first time he stopped at Mesilla eight or fifteen days, long enough for the feasts to be over. When he went up to Mesilla that first time he traveled on the other side of the river and came back on the same side. He left Paso del Norte by the Canoncitos and when he came down out of the hills beyond Canoncitos, he passed near the Piedras Paradas and remembers seeing them. The road was rather near those rocks. The name of the road was the Camino Paseno. After passing the Piedras Paradas the road ran along the valley. He remembers on that trip seeing Amoles and they stopped there all night. In traveling on that side of the river he did not cross the river anywhere. After passing Piedras Paradas you could not see the river on account of the large bosques. He made several trips to Mesilla before he went to live in Dona Ana. They used to go there to sell things, dried peaches and things to eat, bunuelos and sopaihas and sold them at the fiestas. All the trips to Mesilla were on the other side of the river. He traveled on the east side of the river when there were feasts in Dona Ana and before he went there to live he had gone to the feasts at Dona Ana. Dona Ana is on the east side of the river. Before he went there to live he went to Dona Ana one or two times, but he is not sure. In making those trips he became acquainted with the places on the

east side. Somebody told him the names of the places where they stopped. He knew the place called Alamitos which is a little above where Anthony is now. Alamitos was a ford. They used to water there all the time and people used to cross there going to Amoles. When he first knew it there was nothing at Alamitos but a stopping place for the carts. There was not any house there. Afterwards there was a station there. He did not see the station when it was being built, but when they passed there another time it was already built. When he first saw it, it was a new house. A man by the name of Scott lived there, but the witness does not know what Scott's business was. He does not know why the place was called Alamitos. There were a few alamos there and some willows also. The stopping place was about 50 varas to the river. He has recently revisited that place and found the ruins of the stage station. The river does not flow there now. There are a few alamos there yet. Plaintiff's Exhibit No. 7 being shown to the witness, he says, that is Alamitos. He is then shown Exhibits 8 and 9 and says he does not recognize that. That looks like an old tree but he does not recognize it, indicating Exhibit No. 9, and as to the other one he does not remember. He says he thinks the trees in Exhibits Numbers 8 and 9 are the same, but he does not think the one shown in Exhibit No. 7 and the others are the same, but he does not know. He does not recognize the place shown on plaintiff's Exhibit No. 1. From Alamitos to the place where Anthony now is, the river ran in this direction (pointing southeasterly), and beyond it made a bend towards where the railroad is now to a place where there are some cottonwood trees. He does not know whether that place had any name or not. Where the river came to the east it went to the edge of the brush and the brush was on the hills. From that place downward the river formed some bends, not large. He knew the place that was called the Alto de la Bruja, which

was below the place where the cottonwood trees were which he has just spoken of. In front of the Alto de la Bruja the river formed a small bend. There were two branches there. They had to go on the height of La Bruja and the road was not very far from the river. The road went on the height of La Bruja. Below that point there was another bend on getting near another hill. He now knows the place which is called Vinton and a little beyond that place was a bend, both above and below that place. At that time he did not hear the name of the Estero de las Sanguijuelas. At the lower end of the bend which he has just mentioned the river was near the hills. There were other bends below that little one. The next bend was at the place now called Canutillo Nuevo. He has seen the bridge near that place and when he first knew the river at that point it passed close to the hills and below it changed. It was as near the hills as that bridge is now. He knew Doroteo Salado who lived here at the place called Pueblito, in Juarez. Afterwards he lived a little below the place they call the Sanguijuelas, and above the place now called New Canutillo. The witness does not know the name of the place where Salado lived. Agapito Rival lived there also. There were only two houses there. On top of the hill there was a seepage from which water used to run down to the bank. The river was about 50 paces from the houses. He has recently been at that place and could recognize and find the place where the houses had been, but no river near where those houses were formerly. He found the bed of the old river near those houses. He did not know a place called Duraznito, he only heard it mentioned. The river was divided in two branches near what they called La Bruja. At the place where Salado lived there was one branch there where the river ran first. There was a grove of willows and cottonwood trees and those two branches came together below Salado's house, not far away. From New Canutillo to where Salado lived the river was against the hills

He knew a place called White's Ranch. When he first saw that place nobody lived there. The house was on a height and the river was about 25 varas from the house. He knew a place called Muleros, which was a ford, near White's Ranch and the Piedras de Amolar. The Piedras de Amolar were rocks that were used like a grindstone to sharpen axes. From White's Ranch to Piedras de Amolar the river ran along where the railroad track is now and was right adjoining the hill of the Piedras de Amolar. From White's ranch to Alamitos the road which he traveled by ran over the hills and it only came down some places where there were arroyos. They had to hunt for good crossings for the carts. The road ran generally on the hills because there was no other road and that is the road they used to travel on. Above White's Ranch there were places where the river ran near where the railroad track now is, but he cannot tell where those places are because everything is very much destroyed now, but when he visited the place recently he could see and point out those places. He did not know the Arroyo de Artesa. He does not remember about the change of the river when it left Alamitos but it does not run there now. When he first went to Mesilla it was on the other side of the river and it is now on the lower side. He remembers about the river changing from one side of Mesilla to the other and when the soldiers from Texas came there. Being asked if the river changed before or after those soldiers came from Texas, he says he does not know, but he thinks it was about that time that the change took place, and after that change he did not see the river running at Alamitos any more. Before that change it did run at Alamitos. After that change he does not know where the river ran below because he traveled mostly on this side after that time. He says there was a town at the place which he called Amoles. He passed there about three years ago. Several people lived there but he does not know them. He heard that the old town of Amoles was

destroyed by the river, but he does not remember when it was. It was at the time when the change at Mesilla took place and at that time there was a very large flood. After the river changed at Mesilla he did not see the river running near the place where Salado lived, the river went towards the other side. After that he traveled some on the west side and at some points the river touched the hills and at others it did not. He knew the place called Loma de Arena, and after the river changed at Mesilla it ran near the Loma. He knew the place called Corral de Trosas, and after the river changed at Mesilla it ran near the Corral de Trosas, but before the river changed at Mesilla it did not run near the Corral de Trosas. He knew the Corral de Tapia. He was then asked in Question 176, if after the river changed at Mesilla, did it or not run near the Corral de Tapia, and the record does not show any answer to this question, but in response to the next question he says that before the river changed at Mesilla it did not run near the Corral de Tapia. He knew the Piedras Paradas and after the river changed at Mesilla it ran near the Piedras Paradas and before the river changed it ran very far from the Piedras Paradas. Being shown plaintiff's Exhibit No. 2, he says he thinks those are the Piedras Paradas. There was no house of Gualdarama at that time and he did not know a lime kiln called the Calero de Gualdarama. Between White's Ranch and Alamitos there was only mesquite at the edge of the river on this side. On the other side there was bosque, cottonwood trees, tornillos, and willows, very large bosques. As he traveled along the wagon road on the east side of the river he could see the river from the road. After the old town of Amoles was destroyed by the river, the people went to the hills and built themselves houses at a place called Nombre de Dios which before was called Chamberino, and at a place called La Union. The place called Alamitos was rather far from the hills on the east side. When he recently visited the

country up there, he remembers seeing above White's Ranch a little brick house and the remains of a brick yard or brick kiln. When he first knew the river it passed right at the heart of the brick kiln, right through the brick yard, that is, where it is now. He knew Chapo Reyes who lived a little above that brick kiln and there is somebody living at that place now but he does not know who. When he first knew the river it ran very close to the ranch that Chapo Reyes had. Chapo Reyes had cattle and horses and he did not cultivate any land. He knew of no other persons living on the east of the river between Alamitos and White's Ranch when he first knew the river. Between Alamitos and White's Ranch there lived Doroteo Salado and Agapito Rival and Chapo Reyes afterwards. At the time that the station was built there were no people on this side. Those other people lived there afterwards. He never knew a man by the name of Cumplido up in that part of the country, nor Gonzales.

On cross-examination, the witness testifies that in the early days he knew a man by the name of Benigno Alderete and they were boys together. The witness says he may be older than Alderete, a little older. When he was a boy he knew Santiago Magoffin and Jose Magoffin, but he does not know whether he or Jose Magoffin is the elder. He knew Jose Magoffin when he, Magoffin, was already a man. When he was a boy he knew when Don Eugenio Van Patten first came and he is about the same age as the witness. He does not remember about Van Patten opening the stage lines. He does not know whether the stage line had been established before he went up there, but the stages were running the first time he went up there. When he first knew Don Eugenio he knew him at El Paso and when he left he does not know where he went to. Eugenio lived at Pueblito and the witness lived at Senecu'. Pueblito is in Juarez. They call it

Juarez now. Van Patten lived in Pueblito before the Texans came but the witness does not know what his business was. He knew Price Cooper but he does not know what business he had. He knew him only by sight. He did not know when he cut wood above White's Ranch nor when Santiago Magoffin cut wood. He says that when Magoffin was farming and had farming lands there he knew it, but he did not know anything about the cutting of the wood. He does not remember when they opened the farm near Canutillo and made an irrigation ditch in those parts. He did not know of any farming land and never saw a farm up there in the early days. There were no signs of any farm having been there and abandoned before he went there. There was no cleared land near Canutillo. He never heard of the custom house at White's Ranch. Agapito was herding goats there. He is then asked in Question 252, what year he was born in and he says he does not know, and he does not know how old he is and does not know what his age was when the Texans came but he was very small. He does not know the year when the Texans came and tells counsel not to ask him about dates because he does not know them. When the Texans came he might have been about eight years old, perhaps less than that. (It seems possible that these Texans of whom he speaks may have been Doniphan's troops in 1846 because he has already said that he had made a trip up to Mesilla before he heard of the raising of the flag at Mesilla, which was in 1854.) He remembers having heard the name of John Baylor in command of the Texans but he did not hear the name of Teel nor of Sibley. Scott was at Alamitos with his station, but the witness does not know what he was doing. They traveled in those days with wooden carts with oxen and where night overtook them, they stopped at night and traveled during the day. There were many Indians in the country. Sometimes they had two carts. Other times they had four carts. The first time he went up on the

east side he traveled in carts and there went with him his uncle Carpio Alejo, Ynez Barela, and Domingo Paiz, and they were going to Dona Ana. He does not know when the monument was erected near Dona Ana and never saw it. At one time Old Mexico went up to Dona Ana but he never saw the monument on the west side of the river near Dona Ana and he never heard of it. He never heard of their surveying the river nor of a man by the name of Salazar locating the river, and he never saw any soldiers and surveyors locating the river and never heard that they had located the river. Being asked in Question 279, how long he has known Mr. Flores, referring to the interpreter for Texas, he says, that he knew him many years ago and he was then a very thin looking man. He is very fat now so that he did not know him now. He first knew Mr. Flores in El Paso. He remembers when the court house was moved to Ysleta and he was a man then, but he does not know what year it was. He went to show the river last Tuesday with Van Patten and the surveyor and a man who was here today, he does not know his name. He heard the name of Steen. The man who was here today who went with them he heard his name, but he does not remember it now. It was the old man who was here and counsel then suggests to him that it was the witness and he says that it was the witness. (This may perhaps refer to the preceding witness Dionicio Parra, but probably not.) He is then asked what other Americans went with him and he says Van Patten and the surveyor and the witnesses, Mexican men, were four, Luis Cordero, Dolores Alejo, and another, Pancho, and his son also by the name of Pancho. The son was driving the wagon. He has known Pancho from that day on. He never saw him in the early days. He has known Luis Cordero since he was born and knew him at Senecu'. He is older than Luis and Luis was raised at Senecu'. When the witness was young he did not know John or Henry Gillette or Joe Schutz, but he heard of Joe Schutz but does not know

what he did. He did not know the name of Sam Schutz and never heard of him. During the war when the Texans came he was living in El Paso and had not lived away from El Paso at that time. He heard of the battle of Mesilla but he does not know that it was fought when the Texans came. He had already been up the valley when that battle was fought, once. He does not know who commanded the Texans in that battle of Mesilla and he never was at Fort Fillmore. It was quite a long time after the Texans came when he moved up the valley, when the battle had already been fought. When he was showing the river to Mr. Van Patten he came from Mesilla. He lived in Mesilla two years and prior to going there he lived at Las Cruces where he lived for quite a number of years. He does not know how many. He went from Dona Ana to Las Cruces. When he went to live in Dona Ana he must have been fourteen or fifteen years old. Counsel then showed him plaintiff's Exhibit No. 7 and he admits that he identified that as being Alamitos, but Alamitos did not look like that when he first saw it. There were thinner and smaller trees. There were more willows than cottonwoods. Counsel then asks him in Question 337, when he first saw that place called Alamitos how many cottonwoods were there, and he answers, that he did not count them. Counsel persists in Question 338 and asks him about how many, to which the witness answers as follows: "I could not tell you. There were quite a number of cottonwood trees. How in the devil could I count them? I do not believe that is a question that a rational man asks, or that it is just or fair. How in the dickens am I going to count the trees? I am an ignorant man and I do not think anybody would be counting trees in a bosque." He was then asked, if there were several large trees and he says they were not very large or very small, they were cottonwood trees of regular size and it was not a bosque. They were on the edge of the river as it ran and there were some willow trees at the same time. He is

then asked, counsel evidently referring to the photograph which he had shown the witness, if this is one of those cottonwoods that he saw when he first visited that place and he says that he could not ascertain whether it is that one or another tree. He cannot say that it is. He knows that this tree grew on the bank of the old river because he sees it now and he knows that that place is the river because the bank of the river is there yet. He is then asked in Question 343, if the river has not in different years changed many times from one place to another, and he answers, that in those years it did not change at any place and that it is now that it has changed, when the floods came down. He is then asked what it is at the foot of this tree that appears to be water and he says that there are some holes there and that the river ran by there and since the river changed there has always been water over there. He remembers when an irrigation ditch was brought down past that place on the edge of the monte. Scott's house had already been thrown down. He heard the name of Gold Tooth mentioned but he did not live there. He saw that ditch which they were digging to irrigate lands from Vinton this way. He made about two or three trips on the west side of the river before he made one on the east side and in making those trips he was going to Mesilla. Being asked what he was going for to Mesilla, he says, that his uncle not himself, went there to sell things to the people there, to cook meals, once a year. He does not remember in leaving Seneca' what time they would start. Above Canoncitos they camped at the Pelillar which was a tract where there was a good deal of the weed called Pelillo, and there was some monte besides. It was very far below the Corral de Tapia and was below the Piedras Paradas. At that camping place they got water for their teams in the river which was on this side. Pelillar is far from the river, and from there they next stopped at Amoles and camped at no place between on account of the Indians. Between the

Pelillar and Amoles they did not cross any estero and did not see any water along that way. The road went by Corral de Tapia but it did not go up, it went down, evidently meaning that the road was below the Corral de Tapia, because in his next answer he says, that the Corral de Tapia was above, but he cannot approximate the distance from the road. The other day when he was showing the river he went to Corral de Tapia and the river is there adjacent to the Corral de Tapia and he went as far as the Alto de los Cuarones. The present river is far from that place. The road which he traveled in the early days went by that place on the edge of the monte. (It should be stated that the word "monte" as used in New Mexico does not mean usually a mountain or hill, but a woody place and usually small brush.) The road was going in this direction (indicating towards the north and east), and where they killed those men was below it. There was a large mesquite tree there where the crosses were put where the men had been killed. In the early days he knew the Corral de Trosas and the old road was to the east of that place and went near the Corral de Trosas about 10 or 20 paces, very near. He did not know the bend of the Cobrena. He knew the Loma de Arena and the road ran below that Loma towards the bosque, but he cannot tell how near it was to the hill, but it was far. There was not an estero near that hill. He did not know the Island of Jose Maria Garcia and never heard of it. On his first trip he did not learn the names of the people living at Amoles although they stopped there. He could not hear the roar of the river from that place because it was quite far. The people of Amoles were farming and got their water from above, but he does not know how far above where they took the water from. He never went to the beginning of that ditch and never was where it came from the river. On his first trip when he went to Dona Ana he traveled on the road on the east of the river. Counsel then tells him in Question 420, that that

was when he was 18 years old, and he says he does not think so; and counsel then tells him that he said yesterday that he made his first trip to Dona Ana when he was 18 years old, and he says, that that was when he went to live at Dona Ana and he had already made a trip to Dona Ana before he went there to live, but he does not know how long before. When he made that first trip between White's house and Alamitos nobody lived there. When he made that first trip the stage coaches were running. When the Texans came he does not know how many years he had but it was before he was a grown man, and he might have been eight or nine years old. (This is subject to the same suggestion already made as to what he understood by the Texans who came. They may have been Doniphan's troops, for the reason already suggested.) At Dos Alamos the old stage road was towards the monte from the railroad and on the sunrise side of the railroad. At certain points the old stage road is near the railroad and at other points somewhat distant. He did not say yesterday that he knew where Dos Alamos was and he never heard of it. In the early days he did hear of La Bruja which is above Vinton, or he thinks it was above Vinton but he does not know. He was then asked in Question 447, "If you did not know why did you say it was above?" To which he answers, "I tell you my head is not in a condition to answer so many questions. I forget things." When he was a boy someone pointed out to him the Alto de la Bruja which is a height. There is no height there now, it is all level. It may be the water leveled it, the currents that came from the mountains to the sunrise side and not from the river. There are several arroyos that run from La Bruja which could wash away the heights. The La Bruja height was washed away by floods from the arroyos and also on account of earth taken to build the railroad. It may be that someone had to tell him that was La Bruja but he does not know. He knew when he was showing the river when

he reached La Bruja because the place is well known. The hill is not there but in parts it is well seen. Being asked where was the bend in the river below Old Casa-tillo, he says, he did not pay any attention then as he was so young. He only looked at the river and had no interest at that time in the bends of the river and the distance of the river from the road made no difference to him. There were Indians in the country when he made the first trip up and down the river on the east side and they made war on Mexican travelers, and he and those who traveled with him were afraid of the Indians. Agapito Rival had some goats and he was a doctor. He was not living there when the witness first went up on the east side, nor was Chapo Reyes, but the witness does not know when Chapo Reyes came. After the Texans had gone back he lived at Senecu'. He was not at Amoles after the Texans went back and never saw Amoles after the Texans went away, nor the Corral de Trosas, nor the Corral de Tapia. He did not know a man named Juan Sais and did not know where he lived. He went only once to show the river. Eugenio took him to Alamitos. He did not tell the witness what he wanted with him but only told him to show him. He asked the witness if he knew the current of the river and he told him, yes. He did not tell him of what year because he does not know the years and he only showed him the place. The witness took the lead in showing the river and got into an old river-bed and followed it all the way down. He followed some stakes set in the valley in the old river-bed. The river-bed which he followed is very much covered. At some places you can see the bank of the old river and some other places you cannot. In the early days there was only mesquite brush in that country. He walked to White's Ranch. He did not walk all the way from Alamitos to White's Ranch, but was in a wagon. When showing the river below Alamitos he got into the wagon from Anthony but did not ride from Anthony down to White's Ranch.

He walked to this side of the place they call Vinton or above Vinton, and then rode in the wagon to White's Ranch. Don Eugenio told the driver which places to take him to. The following day they went across on the other side. They went from White's Ranch down to the bridge at Piedra de Amolar and crossed the river and went up to Piedras Paradas and to the Corral de Tapia and then to Corral de Trosas and then struck the Canutillo road and went to Canutillo and stayed there all night. The next day they came here. He spent only one day on the west side. Before he went to show the river he had not talked to Don Eugenio about it. He sent after him all of a sudden and they started on the trip right away. He knew that the witness had traveled these roads before because he saw him traveling these roads when he, Van Patten, was living at El Paso. When he first knew Van Patten he was a grown up boy already and the witness told him that he made these trips. He made a declaration when he came from showing the river at the house where they are stopping. He says there were no Americans present but he thinks his declaration was translated into English. Neither Mr. Chaves, nor Mr. Baker, nor Mr. Austin were there, but he thinks Mr. Reber was there. He was not sworn, it was a voluntary statement. It was not taken in writing.

On re-direct examination, the witness says that when the river changed from the east to the west side of Mesilla he lived at Senecu' and he had never been at Dona Ana before that. He knows a place called Brazito. It is not the same place as Temascalitos which is a little above, but they are near together. He heard of the battle of Temascalitos or of Brazito and was about seven years old when he heard of that battle. (That battle was in 1846.) He did not know who fought that battle but some people went there from El Paso, Mexicans, and he believes that Americans were fighting against them. After that, when the Texans came, he was larger and he saw those

Texan soldiers opposite Senecu'. Before he saw those Texan soldiers he had been up to Dona Ana once. His parents were Feliciano Alejo and Gregoria Espinazo. From the place called the Pelillar up to old Amoles, the road ran through the bosque. The place where the Cuarones were killed was on a height. When he first knew the Corral de Trosas there was a corral there and cachinilla and monte brush. The corral was at the edge of the hill. The road that ran through the bosque went to that corral and then came down again and it was the main road. The witness is asked in Question 575, whether he could or not find the river where it formerly flowed when he went to show it recently although he cannot make explanations or statements here about the river, and he answers, yes. Between Vinton and White's Ranch they did not get off the wagon. He did not know the place called Duraznito, but he heard it mentioned. They did get off the wagon at the place where Doroteo Salado formerly lived to examine the place where the house and the spring used to be and they got off the wagon at New Canutillo where the bridge is, but not at any other place before they got to White's Ranch. On that occasion he saw the place where Chapo Reyes formerly lived, but did not get off the wagon to look at that place. He had not been up the river before he heard of the battle of Temascalitos.

On re-cross examination, he says that he was baptized at Senecu', and in Question 599, he is asked who baptized him, to which he answers, "How do you want me to remember who baptized me at that time? What kind of a question is that?" He has no baptismal certificate. The record of his baptism is not at Ysleta but must be at Paso del Norte. He has never seen the certificate of his baptism.

On re-direct examination, he says that as he rode along in the wagon below where Salado lived the other day, he could from the wagon see where the old bed of the river had been.

We now come to the testimony of

PEDRO BENAVIDES

which begins on page 1189 of the record.

This witness says that he lives at Las Cruces and has lived there a little over 50 years and before he went there he lived at Juarez which at that time was called Paso del Norte, and he was born there. Before he went up to Las Cruces to live he made several trips to that part of the country. When he first was taken there he was about seven or eight years old, but he remembers something about that trip. At that time he went to Dona Ana. Before he went up there to live he had made about six or seven trips to Dona Ana and Mesilla. In making those trips he traveled on this side of the river but not on the west side. After he was a grown man he traveled on the other side. He remembers about the flag being raised at Mesilla but not the date. He was here at Paso del Norte in those days. He had been at Mesilla before the flag was raised two or three times. The first time he went to Mesilla was two or three years before the flag was raised. He remembers when Mesilla was first settled and he was at Mesilla two or three years after Mesilla was settled. He was about 16 years old at the time the flag was raised at Mesilla. In the trips before the flag was raised he became well acquainted with some of the places along the river and he knew the place called Alamitos which was a stopping place. When he first knew it there was no one living there, it was a good stopping place because the river was near to the road. He knows the present town of Anthony and Alamitos is about 300 or 400 yards above. He does not know why it was called Alamitos. There were a few cottonwoods there. There were a very few. From the place where the wagons used to stop the river was about 25 or 30 yards. He has recently revisited that place and was able to recognize it

but he does not know whether the trees that are there now are the same that were there then, he cannot tell positively that they are the same. The river ran close to Alamitos and then ran straight to the south; for about two miles it ran straight and then made a little bend and then below that there was another little bend. He knows the place called Dos Alamos or Tres Alamos and when he first knew the river it passed right close to the trees and the railroad is very near to the trees. He knew the place called the Alto de la Bruja and the river passed rather far because the river made a bend there. The bend started right at the Alto de la Bruja. Between Tres Alamos and La Bruja the river ran straight with the exception of a small bend. The bend which started at La Bruja started towards the west and it turned afterwards to the east and went very close to the hills. In the early days he knew the Estero de las Sanguijuelas which was close to the hills and was near the river, about 100 yards, more or less. The railroad runs right over that estero now. He did not know where the Arroyo de Artesa was. In those early trips he traveled with burros with his father. They used to make rope and brushes to take up there and sell. He knows the place now called New Canutillo and has recently seen it. When he first knew the river it ran adjacent to Canutillo Nuevo. He has seen the bridge near New Canutillo and at that place the river passed when he first knew it where the river is now. He heard of a beaver dam but did not know it and never saw it. He knew Doroteo Salado who lived at Canutillo Viejo. He did not know anybody else there. The river was about 25 or 30 yards from the house in which he lived. The road approached the house within 100 yards, more or less. He knew a place called Duraznito which was used sometimes as a stopping place. It was called Duraznito because a peach tree grew there. He never saw the peach tree but he saw the tree already dead.

The dead peach tree was right close to the river. From the road opposite Duraznito you could not see the river, the bosque obstructed the view. When he first knew that place there was bosque on the other side of the river and it was large. He knew of a spring near the house of Salado about 15 or 20 yards from the house and it was close to the bank of the river. The water from the spring ran into the bank of the river. He has recently revisited that place and found the place where Salado lived. There is no river there now. The river is very far now from Alamitos. Between New Canutillo and the place where Salado lived the river ran straight except for little bends and was very near to the hills. He knew White's house and the river ran near to it. It was on a height, and from the house to the base of the hill towards the river it was about 200 yards, more or less, and the river passed right by the hill. Between Duraznito and White's Ranch the river formed a bend which was the largest bend that he knew at that time. When he recently revisited these places he saw below Duraznito a little brick house and the remains of a brick kiln and when he first knew the river it ran east of the little house and was near the hills. At that place the railroad is now right where the river was then. There are several places where the railroad is now that the river was formerly. He is then asked to tell where those places are and he says, at Tres Alamos and below that in two places and below that in several places more, up to where Salado used to live. There are some places where the railroad is now where the river used to be and where the railroad has taken the old river-bed. When he was out on the ground he could find and point out those places. He knew a place called Muleros which is on the road that goes by Canoncitos. A large stretch of country was called Muleros and was west of White's Ranch and west of the river. He knew the Piedras Paradas. The Muleros ford was about a mile above White's Ranch and

in going to Piedras Paradas from El Paso they did not cross there, but going from the east side they crossed there sometimes. When he went by the Canoncitos he crossed at that ford sometimes and sometimes not. The road which came through Canoncitos was on the west side of the river. When he first went up to that country Mesilla was on the west side of the river and it is now on the east side. He remembers when the river changed there, but does not remember the year. He remembers when the soldiers from Texas came to Mesilla and they came before the river changed. He does not remember of a flood which came while the Texans were there. At the time that the soldiers arrived there he was here at El Paso. After the river changed at Mesilla he saw the river running at Alamitos, very little. After the river changed at Mesilla the main current was on the other side. He did not know the place called Amoles, the river destroyed it. He does not know whether the river destroyed Amoles at the time it changed to the west side of Mesilla but thinks it was afterwards. He knew a man named Uranga who lived here at El Paso. He had some property up above on the river. In that large bend which was mentioned as the largest bend in the river, that was called the Uranguena, and it was there that he had property on the east side of the river, about two miles below the place now called Vinton where there are brick kilns. He knows one or two small lime kilns above La Bruja. They are at the foot of the hills. When he first knew the river it ran about 100 or 150 yards from those hills. From White's Ranch to Alamitos the road which he traveled in the early days went over the hills because the river obstructed its going below. There were a few places where the road used to come down from the hills when the river was very low. That road ran near the place now called Anthony. When he first knew the country there was no large bosque on the east side of the river between Alamitos and White's Ranch, but on the

other side of the river there was. Nearly all of the bosque was on that side. He knows the Piedra de Amolar and when he first knew the river it ran adjacent to the Piedra de Amolar. Between White's Ranch and Piedra de Amolar the river ran straight near the hills. The Piedra de Amolar was about 200 yards from the beginning of the canon through which the river runs. He heard that there was a ford at Duraznito, but he did not know it himself and never crossed there. The road on the west side of the Canoncitos passed about three or four hundred yards from Piedras Paradas to the east of the rocks. He camped near Piedras Paradas and the river was to the east and from the road to the river it was about 900 yards. Very few people camped at that place because the river was far, but they used to go higher up where the river was not so far, at Corral de Tapia where the river was about one thousand yards to the east. When he stopped near the Piedras Paradas he could not see the river from that place on account of the bosque and at the Corral de Tapia you could not see it on account of the bosque, but sometimes there was an estero near there where there was water in which they watered their animals when there was water. He knew the Corral de Trosas three or four miles above Corral de Tapia. From the Corral de Trosas you could see the river through some cleared places in the bosque and it was about two or three hundred yards from that place. The road on the west side of the river was called the Muleros road. It was the same road as the Paseno road. Above Piedras Paradas that road went through the bosque and there was a good deal of bosque. He did not know the Island of Jose Maria Garcia but heard it mentioned. After the river changed at Mesilla he traveled up and down the river on the west side and did not find any river there and did not see the river running near the Corral de Tapia, and the river does not now run near the Corral de Tapia and it does not run near Piedras Paradas, but

in answer to the next question he says the river does run at Piedras Paradas now. He remembers now that the river does run there. He has never seen the river run there until now. When he first knew the country there were two roads by which he could go from here to Las Cruces or Mesilla, one on this side and one on the other side. The one of the Canoncitos and the one on this side.

After a recess from morning until afternoon, the interpreter Chaves states that the witness tells him that he made some mistake and wishes to make a correction of his testimony, and on page 1200 of the record counsel for New Mexico tells the witness that Mr. Chaves had informed him that the witness says he made some mistake in the morning and tells him he wants him to correct it, but he first asked the witness whether anybody else told him that he had made a mistake or whether he knew it himself, and the witness says that nobody told him anything about it, he thought of it himself. He then says that he made not only one but two mistakes and they were with regard to Duraznito and Corral de Trosas. He says that he thinks he said the river ran far from Duraznito and it did not run far but it ran right by there; and at Corral de Trosas the river ran very far to the east but he cannot tell how near it was, but it was far. He was born in Paso del Norte and his father was Victor Benavides and his mother was Feliciana Abalos.

On cross-examination, he testifies that since the adjournment before noon no one had called his attention to the Corral de Trosas and Duraznito; that his religion is Catholic, and that the oath which he gave a little while ago is binding on his conscience and is as binding an oath as he could take; that he told Mr. Chaves that he had made these two mistakes about an hour ago, after dinner but he said the same thing to that gentleman before dinner (indicating Mr. W. R. Reber); that he ate dinner by himself at a Chinaman's restaurant; that he told Mr. Reber

and Mr. Chaves of the two mistakes and that no one had asked him about it, and that those are the only mistakes he made in his testimony. He knows Julio Rivera from Las Cruces and he saw the river with him and saw the same things that he saw and told the surveyors the same thing about the ancient river. He has been questioned about what he knew as to the river at Las Cruces by Mr. Van Patten who took down his written statement. He thinks Mr. Van Patten wrote it down. He does not remember who swore him to it. The person who wrote down his answers was Mr. Baker. He said that Mr. Van Patten asked him the questions and Mr. Baker wrote them down and the answers, about a month ago, perhaps less. He thinks it was in the beginning of November when he went to show the river. The first time that he came only Rivera and himself and another man whose name he does not remember. The witness thinks that man lives somewhere at La Union. The second time he cannot tell the names of all the parties because he does not know them all. He remembers Valentin Abalos but not the others. He thinks there were about seven. The others lived somewhere in those lower ranches and some others from Mesilla and there were some from Las Cruces whom he knows by sight but does not remember their names. He does not know the names of the Americans who were with him on the first trip. Being then asked to look around and see if he can see them, he points out Mr. Reber and Mr. Austin the cook, and says he was a splendid cook. Mr. Chaves was there also. Mr. Baker was there also. On the second trip Mr. Austin, Mr. Reber, and Mr. Baker were present. On the first trip there was only himself, Julio Rivera, and the man whose name he does not remember, he was a Mexican. Mr. Van Patten and the surveyor were with them. He went the second time because he was not in accord about some places on the first trip. They did not go to the place where Salado lived, but on the first trip they went along the road and

did not come to the place. The present road is about 400 yards from where Salado's house was and the railroad track is now between. Opposite Salado's house the railroad is about 20 yards from the wagon road, more or less. He had a difference with the other witnesses about the Corral de Tapia and the difference was about how the river ran. The river ran near the Corral de Tapia. He was not certain as to where those places were and no one made him remember where they were or told him where they were. On the second trip is when he found the Corral de Tapia and he knew it himself. There is a great difference now as to what it was then and for that reason he was not sure. There was bosque there when he first saw it and the river runs right there now. He knows that is Corral de Tapia by other different places and he knew them,—the hills and other places. There was nothing but bosque at Corral de Tapia when he first knew it. Now there are small patches of bosque. The original trees have gone and have been chopped for wood. He found the place called Corral de Tapia because the place had not gone at all. In Question 287, counsel tells him that he said he only knew it by the bosque, but the record does not show that he ever said that; to which he answers, the bosque and the hills near by and other places near by. The bosque did reach the hills. The road which went through Canoncitos joined the road called the Paseno as it came down from Muleros, about a mile above Muleros, one went to the left and one to the right where they crossed the Muleros Ford. He is then asked if he ever crossed the Muleros Ford, and says, yes, but it is so many years ago that he does not remember, he was very young then, it was before the Texans came, about a year before, more or less. He crossed in a cart. He had been on the west side of the river before that with burros when he was very small, and went as far as Dona Ana. He was about eight years old. He remembers certain things which he saw

when he was 7 or 8 years old. At this point there is evidently some misunderstanding between counsel and witness, probably due to errors in interpreting, because he says in answer to Question 303 that he did not go on the west road with the burros. He cannot tell how many trips he made on the west side, but he went on that west side road on foot many a time. He traveled that road about two years only and made two trips on foot going up and the other going down. In answer to Question 309, he says that on foot he said that he went up on that side of the river and came back on the same road and he also went on horseback on that side, went up and came down. He did not travel that road in carts. When he went on horseback he traveled by himself, but he already lived at Las Cruces. He is an Indian; and being asked to what tribe of Indians he belongs, he says, Tame Indians they call them, and there were several chiefs, some died and others succeeded them. Counsel then in Question 319 tells him to name the chiefs and the witness says "What is the use of discussing and referring to what race people belong to? It is not necessary to do that." Counsel insisted upon his requirement, however, and the witness says he knew one who was called Sylvano who lived here at the Pueblo where Juarez now is, another one was Marcelino Jemento, he lived at the Barrial. The witness does not understand any English. He cannot tell how many years he lived at Paso del Norte but lived there when he was very young and went to live at Las Cruces and did not come back to live there any more. After his first trip when he was eight years old, he made another trip down here about three years afterwards and he was then about 12 or 13 years old. His father came with him. It was the last trip his father made with him. He saw a house at Alamitos when he was already grown and during the last trip that he made with his father. He does not remember if that was after the Civil War when

the Texans came. He does not remember if the house was a log house. Being asked how was that house made, he says, they put up four posts at the corners of the house, or sticks, and then put up the house this way (indicating). That house was very near the stage road. There were scarcely any trees at Alamitos, one here and one there at Alamitos. (Attention should be called to the fact that "alamitos" is a diminutive of alamos and might mean small cottonwood trees or a few of them.) He never saw a ditch at Alamitos. Before the Civil War he passed Alamitos two or three times and after the Texans came he passed there several times. He lived at Mesilla when the battle was fought there with the Texans. He heard the name of John Baylor but he was not there at that time, but was at El Paso. He was very small then but he had already been up there. He knows very well when the battle of Mesilla was fought but he was not there himself. He lived here at Juarez but had gone up many times. He thinks the battle of Valverde was fought that same time. He does not remember the name of Sibley. He saw a fort when it had soldiers at Brazito and they ran away from the Texans, they scattered in different directions among the mountains. He does not know that they surrendered to General Baylor at San Agustin Pass. Uranga did not cultivate lands there. He had cattle there on the east side of the river. No lands were cultivated there at that time, the Indians did not allow it. At certain places they traveled most of the whole road at night and they used to take the hill road. Very few times did the Indians hide in the bosque. The longest distance that this road was from the river valley was at the Uranguena bosque, three or four thousand yards. He had made three or four trips on that road when he heard the name of Dos Alamos. There were very few trees at Tres Alamos. He cannot tell whether the trees there now are the same or not.

Some very old men who were hunting told him that the name was Tres Alamos, many years ago. Tres Alamos is two or three miles from La Bruja and to the south of it. The old river runs straight between La Bruja and Tres Alamos. The present river with reference to La Bruja runs to the west about five hundred yards from the heights. He knew a man by the name of Gualdarama in the early days. He first lived at Mesilla and then came down below. The witness does not know if Gualdarama built a lime kiln but he saw the lime kilns there, saw them recently. There are three older lime kilns in the neighborhood. He first saw lime kilns there before people lived there. He does not know the owners of them. Gualdarama first lived at Mesilla. It was after the Civil War that Gualdarama went there, but he does not remember how long after. He did not know Price Cooper nor Chapo Reyes. He heard his name mentioned but he never knew the man. When he first knew the river and traveled on the east side nobody lived between White's Ranch and Alamitos. After he had been there several times the only thing was the Alamitos station or post. From White's Ranch there were no people living until you got to Las Cruces. The post was built at Alamitos before Doroteo Salado lived at his place. It was built when the stages came. He does not know who opened the stage line, but he thinks Van Patten had something to do with it. He knew Van Patten when he was 18 years old and that was the first year that he came. The witness lived in Juarez then. Being asked, if he ever had moved to Dona Ana or to Mesilla when Van Patten came to work on the stage line, the witness answers, "I lived for some months at a time." It is not clear whether he means at Dona Ana or at Mesilla. He did not move up there permanently until afterwards. He then says after that he did not live at Dona Ana but at Mesilla. He made trips to Dona Ana but he lived at Mesilla. Before he lived at Mesilla he made

trips to Dona Ana. He does not know when they built the monument at Dona Ana. He does not remember when surveyors surveyed the river between White's Ranch and Alamitos and Dona Ana. He was not there. He heard it said that the survey was made to locate the river and he thinks this was after he had been up the river. He does not remember when the surveyors with soldiers were camped in Paso del Norte, but he heard of it. White's Ranch was a stage post and he never knew it as a custom house. He knew James Magoffin, but he never heard of his clearing lands below Canutillo nor when he had an irrigation ditch about three miles long to bring water to his land on the east side. He neither saw nor heard of it, and he never heard of Price Cooper having charge of the farm up there for Mr. Magoffin. He did not pass there at night but passed there during the day, but did not hear anything about that. He saw the dead peach tree at Duraznito and it was about two feet tall. It must have grown larger because it bore fruit, but he never saw it bearing fruit. He knew that it bore fruit because those who camped there watering their stock used to take the fruit and sell it to them, but when he knew the tree himself it was already dead. There was a stump there. The stump is not there now. He cannot remember when he saw it last. Long after the Texans came the tree was dead. In the early days when he first knew the river he did not know of any lagoon at Salado's house. He knew the river only. He knew both branches of the river opposite Salado's house. The western branch of the river went in the direction of the same old river that was running to the west. The branches separated from Salado's house to the west. The river ran by the little spring at Salado's house. Most of the water ran by that bank and the other branch went in the other direction and then it came back again to the main branch. There was a bosque between those two rivers, very large bosque, so large that you could

not see the western branch. Between La Bruja and Duraznito there were two bends in the river. The largest was down below Duraznito. The largest bend was the Uranguena and that bend was about 1,000 yards wide from where the railroad now is. He did not know an island below Alamitos. Uranga had a pole house but the witness does not know who lived there. He knew the man who lived at the house who was a laborer of Uranga's. The witness did not see any family living there. The man was attending the cattle. The cattle ranged in the bosque on both sides of the river. There were very few trees to the east of the river. There were willow trees and cottonwood trees. The large bend was above White's house and it was a little more than one mile along the road. The west part of that bend was near where the railroad now is and there was bosque in that bend and at that bend you could not see the river from the hills in the center, the place where it was the widest, but at the sides of the center of the bend the river could be seen very well. He could not say exactly how far west that bend went because the bosque was very thick. He did not know Juan Sais and never heard of him. He never saw any map, being shown the map attached to the bill of complaint, and says that he only guides himself by his own eyesight. He was about nine years old when he first saw Amoles. He does not know how far they had to go to the river to get water for Amoles. He did not see the mouth of the ditch at Amoles and never saw where it was taken out. He slept at Amoles when he was young because some of his relatives lived there; a man by the name of Juan Borunda, he was a Mexican. Several other persons lived there, but he does not remember their names. He did not travel very much by that place. He traveled by that place after the Texans went away and the town was there yet. After that he did not pass by there any more. He passed by there before the war but he does

not remember how long before the Texans came was the last time he saw Amoles. He has lived at Las Cruces for about 50 years and before he went there he lived at El Paso, but he lived one year at Mesilla before he went to Las Cruces. He does not remember how long after the Texans went away before he went to Mesilla to live. He did not go to live at Mesilla before the Texans came but he had been there on visits. He went there to live about five or six years after the Texans came and he was about 15 years old. He does not remember whether the Texans came more than once. He knows the Alto de los Cuarones on the west side of the river. When he first knew that place he must have been about 9 or 10 years old. It was given that name because men by the name of Cuarones were killed there. He had been up there before they were killed and had made only one trip on the west side and other trips on the east side. Several trips on the east side he had made and then he heard that these men had been killed by the Indians. They were killed right on the road. It is on the hill where the road comes up to the hill. There was no road below and they used to take the other road because it was shorter; in order to save a big bend in the road they used to take that other road. He does not remember the bend called Cobrena. He heard the name mentioned but he never knew it himself. Thereupon counsel in Question 539 asks him if he ever saw the river running by that place they called Cobrena, but the witness answered that he does not know where the Cobrena was. The Bosque del Gato is on the other side towards Amoles. He knew the Loma de Arena which was a sand hill only and was far from the river. All of that was an immense bosque. The Alto de los Cuarones was very far from the Loma de Arena. The road went all along the bosque. The road that went to the Cuarones ran on the east side of the Loma. He knows when the Santa Fe railroad was built, but he does not know the

year. Prior to the building of that road it had been many years since he made trips up and down the valley, but he cannot tell how many years. He made a number of trips between the time the Texans went away and when the railroad was built. After the Texans went away he made trips for a few years afterwards, but he cannot tell how many. The last trip he made in those years the river was right next to Alamitos and at the place called Tres Alamos. It was right where the Three Alamos are now and it made a little bend right there at La Bruja. The river channel was where it had been when he first knew it and the river was right next to Canutillo Nuevo and at that time the river was about 25 or 30 yards from Salado's house and it was very near Duraznito. The river was running then where it was when he first saw it, but after that it changed. He does not know when it changed. When he went to show the river Mr. Van Patten was with him both times and Van Patten wanted him to show him the places. Counsel then in Question 568 asks the witness if he knew that Van Patten wanted to put the river just as far east as possible, and the witness answers, "He could not place it anywhere that he pleased. It was impossible for him to place the river where he pleased." The witness did not know that Van Patten was looking for the extreme eastern channel of what might be the river. Being asked if he walked along what he claimed to be the old river channel, the witness answers, we did. On foot he followed the channel most of the distance from Alamitos to White's Ranch. From Alamitos he walked to Tres Alamos. He did not see any stakes only two or three in the center where the river used to run before. They passed some alfalfa fields before they got to Tres Alamos and passed a new house near Alamitos with a barn being built and passed on the west side of the house and barn, right next to the house, and they were in a river channel then. He says he cannot tell how many

yards west of the house, but being urged with a question "More or less?" He says, six or eight yards. They went through a field that is right there next to the house. The river channel they were walking in was where the old river used to run before. The bed of the channel is not deep now but he does not know how deep it is. The river there was right next to the hills. There are no hills between Anthony and the river. He could find the river-bed very well because he can see it now, it is a very plain river channel, but he does not know how wide in feet. He walked in the channel. At places you can notice the banks but at places you cannot except when it comes to the hills. He knows the hills all right and also the center of the river. In the center of the river there are no hills. This is in response to a question as to what hill he knew between Alamitos and Tres Alamos, and counsel then repeats the same question but he answers, there are no hills, there was then a mesquite field which has been rooted out, there is nothing there now. And he says that the river-bed can be noticed very well. When they reached Tres Alamos they were then by the railroad track and they traveled there a little bit on foot, along the railroad about 300 yards, and then got into the wagon. Being asked to describe what La Bruja was when he first saw it, he says, that he did not know La Bruja and has said before that he did not know La Bruja. He heard the name mentioned all the time, but he never knew where the place was. Old Canutillo is the same thing as Salado's house and they called it Old Canutillo in those early days, but this is an affirmative answer to the question which put the words in his mouth, and in answer to the next question, he says, they did not call it Canutillo Viejo but Canutillo only. They called it Canutillo but he does not know the reason why. He knew Salado personally and knew the whole family. He knew him and his children. They lived at Paso del Norte

at a place called Chamisal. They did not live at Canutillo at first. Afterwards they lived there. He cannot tell when Salado moved to that place but the stage line was running when he moved. He says that he never saw the stages on that road and it might be that when he was traveling he never met them. Uranga did not live there himself, he had a servant there attending the cattle and he was there when the witness first passed by that place and was living there alone. He used to go around and look after the cattle every three days alone. Sometimes the Indians molested him and they might have driven away some of his cattle, but the witness is not sure of that. His house was far from the stage road, a little more or less half a mile on the east side of the river. When they got in the wagon 300 yards below Tres Alamos they came along the main road to the Salado Ranch. He does not know how the river runs now between Tres Alamos and the Salado Ranch, and then he says, it runs near that place now and he knows because he saw it. Between those places he pointed out all the way along the old river-bed and had no trouble showing the old river between Tres Alamos and Salado's house as he rode along in the wagon. A distinct old river-bed could be seen as he traveled along between Tres Alamos and Salado's house. Between those two places the present river is west of the old river-bed, but he does not know how far the new river is west of the old river. At Salado's house he was showing them Salado's house and the little spring and the old river channel. He does not know how far the present river channel is from the old river channel which he showed them. He does not remember if two river channels can be seen from Salado's house or not. The old channel of the river is next to the spring or to where the spring was and he does not remember how far it will be to the new channel of the river. He knows where it is, it is to the west. He heard the name of Chapo Reyes mentioned

and he knows that Reyes lived there below Canutillo Viejo. He heard the name of this man mentioned and knew that he lived there, but on his first trip he did not live there. About two or three trips that the witness made he heard that Reyes lived there. He does not know what he was doing, but he had a house and he saw the house from the road. It was about 500 yards west of the road. Being urged to fix the distance from the railroad he says that house was about 200 yards, more or less, west of the railroad. The water holes where he stopped for water above Piedras Paradas were above the heights of Santa Teresa. The holes were down at the bosque, about four or five hundred yards from the hills. They were very low places. Maybe the river used to run there sometimes and they were filled by the floods of the water. They were small. He heard the name of Estero de Frijol only. He knew an estero near Loma de Arena which was filled with water when it rained and where the water stayed. The deepest part of it was about two or three hundred yards long. It was quite far from the Corral de Trosas in that direction (pointing northwesterly). Alamitos is to the east of Old Amoles a little towards the north. Corral de Trosas is towards the south from Amoles. Traveling north on the other side of the river he struck the river about three miles above Amoles. When he had finished showing the river at Salado's house they came down the road in the wagon to the Uranguena bend which was between Salado's house and White's Ranch, and there they got off the wagon and walked around the old brick kilns where the river used to run before. They then went back to the wagons and came from there to White's Ranch. Between Salado's house and White's Ranch they walked along part of the river to the brick kiln, then they went to the wagon road again and traveled a little while on foot and then went back to the old channel of the river, and then they came back to the wagon and came to White's house. That was on the

first trip and on the second trip both. No one stopped him at Salado's house. They took the men with them. He does not remember who said, "Let's stop and see this place." He went there for the purpose of showing them Salado's house. They were tired of walking and wanted to rest when they went back to the wagons. They did not stop at these places because Mr. Van Patten said, "Let's stop here." They stopped to get off the wagon at all known places to show them and they showed them because they knew them. When they got to White's Ranch then they came down from there. He had no trouble in locating White's Ranch as it is a well known place, everybody knows the place. The old house is to the east of the present wagon road, four or five hundred yards from it, and they found there the earthen ruins of the house. There are some stakes there but they did not locate the place by the stakes. Where the house used to be there are a few small piles of rock and a stake. From White's Ranch they went to Piedra de Amolar. In the early days the road ran near those rocks on the hills. The road was four or five yards from the rock. The old road ran where the present wagon road runs at that place only. After he showed that rock he went to Muleros. He reached Piedra de Amolar about half past four and slept there and went to Piedras Paradas the following day. They were two days on that side of the valley; the first day they camped a little above Santa Teresa; the next day they kept on and went on that side as far as Canutillo or opposite Canutillo to the west. Between Corral de Tapia and as far north as they went on that second day they did not find any old channel of the river. Above Corral de Tapia towards Corral de Trosas there is an old river channel. It is not very plainly seen because everything is plowed up there. When they got opposite Canutillo those who lived at Las Cruces left for Las Cruces and those who lived somewhere else left for their homes. They went as far

north as Amoles and turned there and took the road and came to New Canutillo. Anthony was far from there. On that second day they did not go to La Union and did not go as far north as La Union. Amoles is quite far below La Union. They went north until they turned east and went almost due east to New Canutillo. On neither of those trips did he come to El Paso. After the first trip which he made he made a declaration at Las Cruces before Mr. Van Patten, but he made only one. He does not owe Mr. Van Patten any money and never has owed him anything. He does not know what this suit is about and does not know anything about it. He knows now because he is informed that it is a suit of New Mexico against Texas. Being asked in Question 777, "Who are you trying to aid in giving your testimony?" He says, that his testimony is what may aid them. He is not aiding them and does not know what the controversy is. Mr. Chaves and Mr. Reber brought him here to the court room from the town somewhere. The railroad brought him here from Las Cruces. He does not see anybody here who came on the train with him. There are two outside who came with him at the same time. A doctor who lives at Las Cruces told him when to come by order of Mr. Van Patten. Mr. Van Patten did not come with him. He saw Van Patten yesterday and talked very little with him and did not talk with him about this case and talked with no one about this case and did not even know what case it was. He talked with no one about the facts. What he talked to Mr. Chaves about was only about those two mistakes that he made, and the same with Mr. Reber.

Upon re-direct examination, he says that he told Mr. Reber about those mistakes "Right there, in here." Before he left the court room he touched Mr. Reber with his hat and called him back and explained to him and he told Mr. Chaves afterwards. When he made his statement at Las Cruces Mr. Van Patten acted as an inter-

preter and was interpreting for Mr. Reber. He is then asked if he would know the names of any of the others who accompanied him on his last trip to show the river if he heard them, and he says he thinks so. He is then asked if Jesus Arvizu was with him, and he says he knew him there and he used to know him by sight. Dionicio Parra may have been with the party, but he does not know him, but he knew a man in that party whom they called the Apache. Antonio Garcia was in that party and Juan Albillar, a very old man by that name, and Florencio Lucero, and Victoriano Duran. He did not hear the name of Sixto Garcia if he was there. Dolores Alejo he knows, but he was not with that party. He was then asked to explain what offices the men who were chiefs of the Indians held and he says in former times when the head of the tribe died his son would succeed him; that was the old custom. Only God knows who were the first chiefs. He says that they are related to the Indians who live above here but they did not retain the Indian custom of leaving their hair long and other customs. The pueblos of Ysleta, Sandia, and Santo Domingo and others are related to him. (These three pueblos whose names he gives are in central and northern New Mexico.) He did not know Fort Brazito by any other name and did not hear of Fort Fillmore. The road which he traveled on the east side of the river went by Fort Brazito. He knows Juan de Dios Sais, he knew him at Amoles and he knows him now. He lives a little below Old Amoles. He does not remember that Sais had a ranch west of the river and north of Corral de Tapia. He does not know the name of the peon of Uranga, but he knew Don Jose Maria Uranga and all his family. When he was making the trip recently he saw the place which is called Vinton and saw a bridge across the river above that place and they got off the wagon and went to the bridge and he saw the bridge at New Canutillo, but he is not very sure if they got off

at both places, but he knows that they got off at one place. They slept the first night on that trip at a house near those brick kilns. He saw another bridge across the river below New Canutillo near the place called Montoya, but he does not remember whether they got off the wagon where that bridge is. He never heard of the arroyo called the Arroyo de los Defuntos. On his recent trip on the west side of the river they went as far as where Old Amoles formerly existed. They did not go to La Union and did not go north of La Union. They went to the Loma de Arena and north of the Loma de Arena to the point in front of Alto de los Cuarones where the road turns to Canutillo. The Alto de los Cuarones is south of the Loma de Arena. They went to the Corral de Trosas which is a little towards the south of the Alto de los Cuarones. He is then asked which is a little towards the south, and answers, the Corral de Trosas.

On re-cross examination, he says that over on the west side of the river he was showing the old places. He does not remember if Mr. Austin went to Old Amoles. He was with them on that last trip, but the witness does not remember if he went as far as that and he does not remember if Mr. Reber went to Old Amoles. He thinks Mr. Chaves went to Old Amoles but he does not remember if Mr. Baker did. All of the witnesses went to Old Amoles and Mr. Van Patten. Mr. Austin may have gone as far as he went, but he does not remember. Mr. Austin was the cook. The last meal he cooked was on the other side of the river at Santa Teresa and the next place was at Canutillo, where they ate at the hotel. The witness did not know when Mr. Austin left.

On re-direct examination, he says that when he speaks of Amoles he means the place where Simon Enriquez lived and they went there on this last trip and he knew Simon Enriquez also and he and all the other men in the wagons went up to that place.

We now come to the testimony of

JUAN MARQUEZ

which begins at the top of page 1239 of the record.

He says that he lives in Las Cruces and was born at a place below here called Concordia and was taken in his infancy across the river to Paso del Norte, and to Dona Ana when he was about 9 or 10 years old. Jose Maria Costales, one of the original settlers of Dona Ana, took him there. There were then only a few houses. He does not know when Dona Ana had been settled. At Las Cruces there were very few houses and the settlement of Dona Ana was not very large either. He lived in Dona Ana until he came to Las Cruces about 25 years ago, where he has been living since. Before Costales took him to Dona Ana, he had not been up to that part of the country. He went that first time on the east side and about that first trip he remembers only Alamitos. He did see the place called White's Ranch that first time and there was a house there and there was somebody there, but he does not know who was living there. After he went up there to live he made journeys down here and back every year. He made one trip every year. His uncle who took him there and his aunt used to bring him down to El Paso. They used to bake things to sell here, things to eat. They traveled in carts with wooden wheels. When he was young he made trips up and down the river on the west side. When his uncle took him to Dona Ana, Mesilla had been recently settled. He heard about the raising of the flag at Mesilla and was in Dona Ana at that time and was then about twenty years old. He does not remember how many years he had been at Dona Ana before the flag was raised at Mesilla, and he does not remember how old he was at that time, but he was grown up. He did not go to Mesilla when the flag was raised, but a good many people went from Dona Ana

there. He did not go because he had others to boss him and they left him to take care of the house. He got acquainted with the road and the river and the different places little by little. He first got acquainted with the stopping places. Beginning at Alamitos the stopping places were, Alamitos, Duraznito, Canutillo, White's Ranch. When he first knew Alamitos there were no houses there and the river was very near to the place where he camped. The road was on top of the hills, but there was a cut-off from the main road to the stopping place. The road came from the main road to the stopping place and then went back again to the main road. He does not know why they called that place Alamitos. There were a few alamos there and tornillo. On the other side of the river there was a very large bosque. He has recently revisited Alamitos. He is shown Plaintiff's Exhibit No. 7, and says it looks like Los Alamitos. There is a tree there and it is very near to where the old river ran when he first saw that place. He is then asked to look at Plaintiff's Exhibit No. 9 and see if he can recognize that tree, and he says that it seems to him that it is the same; and then being shown Plaintiff's Exhibit No. 8, he says that it looks to him as though it is the same. He cannot state positively, but it looks to him as though it is the same. When he recently visited that place he saw a cottonwood tree there, but he cannot say that it is the same as one of the trees which were there when he first knew the place. Afterwards he saw a pole house at Alamitos; it was a station, and he heard that it belonged to someone by the name of Scott. The course of the river from Alamitos down started straight and went this way then (pointing southeastwardly). It started straight first and then it formed a bend. The bend went towards the west and then turned back toward the hills on the east. It did not go far west. He knows the pace now called Anthony. That bend began below Anthony but near to it.

When the river came back it came right where the railroad is now and very near the hills. He does not remember the name for that place where the river came back to the hills, but it came back at a place that they call now Tres Alamos. There are alamos there and from that place the river ran straight. Somewhat below Dos Alamos he remembers where there are one or more lime kilns, but he does not remember whether they were there the first time that he went there. The river was near the place where those lime kilns were and very near to where the railroad now is, opposite that place. He knew the Alto de la Bruja because the place was pointed out to him by his uncle who said, "That is Alto de la Bruja." The road ran on the hills and the river was near to the Alto. Below La Bruja there was a bend, rather large, which went towards the west and came back to the east again, not very far, where it came right near the hills and to the place where the railroad is now, and it was not far from the place they now call New Canutillo. He knew the Estero de las Sanguijuelas which was near New Canutillo from the estero. The railroad is right there now where the estero was. He only heard the name of the Arroyo de Artesa and does not know where it was and he says the same about the Bosque de Artesa. He did not know Doroteo Salado and heard his name only. He has said that one of the stopping places was Canutillo and on his first trip nobody lived there. Afterwards somebody lived there. He saw houses there. They stopped there long enough to cook something to eat, to give water to the stock, and to get dinner. The river was near to the place at which they camped and it was near to the place where the houses were afterwards, about 200 varas. They got water from the river at that place which was near the road on which they traveled. The road was above and there was a cut-off that went right close to the water. He did not know a man named Uranga. He heard the name of the height of

Uranga. He does not remember where it was but remembers that he heard the name. He does not know a bend in the river called Uranguena. He knows a place which is called Vinton where there is a large brick kiln. The bend which he has just described is below that place. He was at Duraznito at one time which was so called because there was a peach tree there. He did not see the peach tree. He was there in the winter time. This is evidently a mistake because in answer to the next Question 113, he says that when he sees a tree he thinks he knows what it is and that he did see it and that he said that he saw it. That peach tree was not far from the river. The river seemed to be wide at that place. The peach tree was very near the hills or the ladera. From Canutillo to Duraznito the course of the river was straight and near the hills and from Duraznito it ran straight, but there was a small bend. He did not know Chapo Reyes. When he recently revisited the river he saw a place below Duraznito where there was a brick house and the old brick kiln and when he first knew the river it ran right by there. White's Ranch was on the top of the hills and very near to the river. He knew the Piedra de Amolar below White's house and right near the entrance of the canon through which the river runs. Between White's Ranch and the Piedra de Amolar the river ran straight and near to the hills on the east side. He heard a beaver dam mentioned, but did not know it and never saw it himself. He does not remember of any place where the river ran in two branches. From White's Ranch to Alamitos the road he traveled on the east side was on top of the hills because there was water below. The main road was over the hills but there were some side roads that went to the stopping places to get water. Traveling along that road they could see the river going on the hills. He never traveled on the west side of the river and did not know anything of that side. He did not know Simon Enriquez but he knows

some Enriquezes. He knew the one who died. Traveling along on the east side of the river he could see bosque on the other side of the river, only bosque. There was bosque all the way between White's Ranch and Alamitos on the other side of the river. In some places there is bosque now and in other places no. At some places it has been cut down and at other places they have planted alfalfa and other things. When he recently visited that part of the country he was able to find the old river-bed between Alamitos and White's Ranch. There were several with whom he went. There were about twelve of them and they went to show where the river ran at those times on the east side. There was not any disagreement among them as to where the river ran. At the present time the river does not run near Alamitos. He does not remember very well when it went away from there, but he thinks it was at the time when the river changed at Mesilla leaving Mesilla on this side. He remembers when the soldiers from Texas came to Mesilla and it was in that year that the river changed at Mesilla. The river now runs at Canutillo where it did when he first knew that place. He remembers the watering place at Old Canutillo and he found that watering place when he recently went there and the water is there now. At Duraznito the river does not run where it did when he first knew it. He does not remember whether there had been any change prior to the time that the river changed at Mesilla in the course of the river between Alamitos and White's Ranch. His father's name was Ynocencio Marquez and his mother was Felipa Paiz. There was only one road on the east side of the river between White's Ranch and Alamitos.

On cross-examination, the witness says that he was born on this side of the river at Concordia and he does not know how old a town Concordia was then. He was born there only and then went to Paso del Norte, where

he lived until he was about 9 or 10 years old when they took him to Dona Ana. He does not know where he was baptized, whether he was baptized at El Paso or Ysleta. His father was from Ysleta. He did not know his father, only his mother. He does not know whether he has ever been baptized. He is a Catholic and belongs to the church at Las Cruces. He does not remember how long he has known Mr. Van Patten, but it must have been over forty years. He did not know him in Paso del Norte. He heard his name mentioned through his wife. When he married her she called his name as she had known him in Juarez. He was a little over twenty years old when he married and he was then living in Dona Ana. His wife married first in Juarez and became a widow and then he married her at Las Cruces. When the coaches ran from Las Cruces this way he thinks he was about fifteen years old. He saw them when they first ran. He did not know Van Patten when the coaches first started. He has known Van Patten about forty years and it was four or five years after the Texans came. He was then asked, for what did the Texans come? And he says, they came here, they fought here and they went up above. They fought at Valverde and also at Mesilla. He was living at Dona Ana when they fought at Mesilla. He does not remember how many years he had then been in Dona Ana, but more than twenty years. In the year that the Texans came he had been married one year. He does not know what war was going on when the Texans came. He is more or less about 75 or 76 years old. He was then asked, what men now living he knows who were boys when he was a boy, and he says, there are very few of them; that at Dona Ana where he was raised there is a first cousin of his who was the first one born at Dona Ana and his name is Cipriano Rodriguez. There is no one living in Juarez that he knows that is about his age. He knew a man named James Magoffin and he knew Price Cooper here and he knew

Magoffin here. He did not know his son, Jose Magoffin. He did not know when Magoffin and Price Cooper cleared a farm and dug a ditch to it above White's Ranch. He did not know anything about that. He never saw any farming land or any farms above White's Ranch, nor any irrigation ditch taken out about Alamitos. He does not know if there was any custom house at White's Ranch. He knows there was a house there but he does not know who lived in it. He camped there sometimes in the morning for breakfast coming this way, having traveled all night. Sometimes he made that journey in the night and sometimes he did not. He traveled in carts, many carts, many traveled together for fear of the Indians. The Indians hid in the mountains to the east of Alamitos. He does not remember when surveyors were camped at White's Ranch. He never saw anybody in the early days surveying the river. He heard something said of a survey made by General Conde and Salazar for the Mexican government. He was then living in Dona Ana. He remembers when the American surveyors built a monument at Dona Ana and saw where they put the monument opposite Dona Ana on the other side of the river. He did not see them building that monument but the people talked about it there. If they camped at Dona Ana he does not remember. He thinks there is no monument there now. About five years ago he saw that it had been destroyed, but he saw the remains of it. He never went up to where the monument was, but saw it from below. He saw it from Dona Ana and it seemed to be high, but he could not say how high it was on account of the long distance. It was four or five miles from Dona Ana. He does not know what that monument was built for. He heard it said that Old Mexico went up to that monument. He heard people talk about that then because he heard them state that Mesilla belonged to Old Mexico, but he does not remember at what time it belonged to Old Mexico. He was at that time 15 or 16 years old. The first journey

up the river was when he left to live at Dona Ana and he made a trip down this way one year after with Jose Maria Costales. All the family came with them, in one cart the family, but there were a number of carts. They stayed down here as long as the fiesta lasted in Juarez and when the fiesta was over he went back with the same people. Sometimes they started from here very early in the morning and traveled all night until Alamitos was reached and stopped there to cook meals and water the stock and after sundown they started again and traveled in the night; coming this way sometimes they would do the same and sometimes they would travel during the day. He continued to travel up and down that river until the railroad was built. Later he used to come by himself up to the time the railroad was built as he was a married man already. When the railroad was built sometimes he came down on horseback and sometimes on the train and he stopped at the same watering places he had known as a boy to water his horse when he came on horseback, and always found the river running at the same place at that time; and then the words being put in his mouth in Question 288, he is led to say that the river was running at the same place until the railroad was built, but he is asked in the next question if the river then was at Alamitos when the railroad was built, and he says, not all of the river ran there, it was a little far from there, some little water ran by, however. In the next two questions he is led to answer affirmatively to statements that he could see the river plain from Alamitos up to the time that the railroad was built and also at Tres Alamos he could see the river up to the time that the railroad was built, but then in Question 294, he is asked if the river ran right where it always had, and he says, no, sir, it was quite far from Tres Alamos. Then in answer to the next question he says it was not very far from Tres Alamos, when the railroad was built you could see the river and from the wagon

road it could be seen well. When the railroad was built the river ran quite a little distance from Salado's house. When the railroad was first built the river was not very far from Salado's house and was near the hills. At Duraznito when the railroad was first built the river was not very far from the river as he first knew it and you could see it from the road. It was near the hills. Ten years before the railroad was built the river used to run at Alamitos and it ran where he first knew it there; and ten years before the railroad came the river was not very far from Tres Alamos and at the same place where he first saw it. Ten years before the railroad came the river ran near Salado's house and where it did when he first knew it. It is to be noted, however, that all of these statements about the river ten years before the railroad was built were embodied in questions which put the words in the mouth of the witness and he merely acquiesced. At the place called New Canutillo, ten years before the railroad was built the river ran where it is now. The river now runs quite far from Tres Alamos and far from where it ran when he first saw it there. It may be 300 yards, more or less. At the lime kilns which he mentioned the river does not run in the same place that it ran before and you can see it from that place. It is near, it is not very far. He has lived at Las Cruces about twenty years and he cannot tell the number of years that he lived in Dona Ana. He lived at Dona Ana since he got married the first time. He was married to his first wife five years and to the second wife about twenty years. On the sixth day of last July one year he is a widower. A year ago last July he lost his second wife. Between the death of his first wife and his marriage to his second wife it was one year and three months. When he married his first wife he was over twenty. He lived with his first wife five years and with his second wife 40 years. He is then led to acquiesce in a statement that he lived for 20 years in Las Cruces and

Mr. Van Patten has lived there all of that time, and the witness worked with him for two years at the Alameda where Van Patten was the foreman of the big ditch. The witness and his two boys worked for him, and the witness was a kind of an under-foreman. He has been intimately acquainted with Van Patten for many years. He has not worked with him in politics during that time. He has known Mr. Amado Chaves since sometime last month. He does not know how long Mr. Chaves has lived in Las Cruces as he has not known him there. He has known Mr. Reber about two years. He has known Mr. Baker about five years. Talking to some people at Las Cruces the witness told them that very few people living now would be able to know something about how the river ran in the early days, and he said that he is one who used to know how the river ran at the early time. The early days there was much danger and nobody lived in that part of the country. There were Indians in the country until in the 70's and they made war until they were stopped. When he first knew the river it was subject to great floods which came yearly. He passed along between White's Ranch and Alamitos when there was a big flood in the river and from the road you could see a very wide place covered by the river. Being asked if the flood water seemed to reach from the hills on the east to the hills on the west, he says, you could not see that because there was quite a lot of bosque on the other side. He passed up and down when there was a big flood in the river every year, sometimes twice a year he made trips, and sometimes once a year and the high water would come out in the low places east of where the railroad now is. He is then told by counsel that when the flood was high he could not see where the river channel was, and he answers, "The channel of the river is known". And when the flood was high and the water over the valley he could distinguish the channel of the river because he was raised on the river from Dona Ana

up. There are small bends in the hills where there is low ground between the railroad and the old stage road and there are some small rincones. They are not very large from the railroad to the east and he does not know which would be the largest. He is then asked, what is the greatest width of any of them, and he says, more or less about 150 yards, and he thinks that would be the widest place. The widest place from the present railroad track to the old stage road, it seems to him, would be about 200 yards, more or less. He has seen that old road lately at certain points. From Canutillo down he saw it in certain places at about three points. From the present road they saw it and he did not go along it at all now. Until now he had not traveled the present wagon road. He does not know that the building of the new wagon road and the building of the railroad changed the appearance of the country, but the appearance of the country is not the same, everything now is settled and people living all along the road, and there are corn fields and alfalfa fields, and there is cultivation where he thinks the old river was. He went to show the old river once. As he stated before he was talking to parties about what he knew about the early days and about the river, and some of these parties may have informed Mr. Van Patten about what he said and then Van Patten spoke to him and asked him if he knew something about that and if he could come with them to show him what he knew about the old river. Before he came to show the river Van Patten did not talk to him about Alamitos, but he asked him if he could come and show him these places and said that he would be paid for it, and he told him, yes, from Alamitos down. That was all he told him. Nobody spoke to him about the location of any particular point until he came to show the river. He was at Dona Ana when he started, and two came from Dona Ana to Anthony and at Anthony the balance of the party was, and he thinks there were about twelve of them but he

is not sure as to the number. He does not remember the dates but he thinks it was last month on Monday and Tuesday and Wednesday, he does not remember exactly. He is then asked to name all the persons who were in that party and he says he does not know them all but he remembers Juan Apodaca, Jesus Arvizu, Jose Garcia, Pedro Benavides, Mr. Chaves, Mr. Baker, Mr. Reber, Mr. Van Patten. He remembers only those persons. He thinks there were only five Mexican witnesses along, counting himself. Mr. Austin was along but he did not know his name. Mr. Van Patten said to go to Alamitos and directed their movements and when they got to Alamitos, Mr. Van Patten in Spanish asked them if that was the place and they said, yes, this is Los Alamitos, and he said if that was the tree, and the witness told him that a cottonwood tree was there but he did not know if it was the same one or a new one, but the place was there. They found a bank of the old river there and Van Patten said himself that that was the one, and they started from there to examine the old channel. At the tree it looks like one branch of the river. It was only the bank, you could see ahead where the river was; right at that place it seemed to be about thirty yards wide and there is a distinct bank on the west side. Right at that place there is a bank on the west side. When he first knew it he thinks there were not two branches of the old river at that place. Below Alamitos he saw on that side bosque. He heard an island mentioned but he never saw it. He heard that the island was somewhere in that neighborhood. He never heard of the Island of Jose Maria Garcia. He understands English only when he is called to eat his meals. Below Alamitos he did not see a line of stakes marking from north to south. He saw no stakes as they went along showing the river. Between Alamitos and Tres Alamos there is cultivated land, there are corn fields and alfalfa all the way down to Tres Alamos. He does not know for how many years the old river-bed has been

cultivated. He does not remember when the first cultivation was put in on that side of the river. It is about two years since he first saw anybody cultivating lands on that side of the river. In going from Alamitos to Tres Alamos they passed houses, but he does not remember how many. He saw several houses in that direction (pointing westward). They passed to the east of the house between Alamitos and the first road which they struck, and from there he followed the edge of the old bank of the river down to Tres Alamos. Coming from Anthony there was a bend. From Anthony the river makes a bend and then comes back to what they call now Tres Alamos and that is through fields and farms. The banks of the river are two or three feet high and at some places more than that. On one side of the bridge which is there it is not three feet but at Tres Alamos it is more than three feet. There is a road leading west from Anthony and he says he told counsel that they were at the bridge at that place, and being asked "What does it cross?" He says, he saw wagon loads of alfalfa crossing that bridge. That bridge spans the old river that was there before and it is very near Anthony, more or less 100 yards from the railroad. Not all of the party walked together along the channel of the river, some remained in the wagon, three or four remained in the wagon and the balance walked along. He does not know the names of those who remained in the wagon. There were two or three in the wagon. He does not remember exactly the number. He walked, Van Patten walked, Baker walked, Reber walked. He does not remember if Mr. Chaves walked. Mr. Austin walked. When they walked down the old river he and Van Patten and Jose Garcia were in the lead, but he does not remember, they all walked together. At places he was behind Van Patten and at places he was ahead of him until they turned back and went to the railroad again. They were all there together. He was talking as he went along about the old river telling where

it was. Being asked in Question 469, if he was governed by recollection when he was a boy or the signs which he then found. He answers that he had to have some recollection otherwise he would not go there to show them. He did not go there to be shown by anybody. He knew of changes made by flood waters in the last several years; that is, he heard that changes were made but not because he saw the changes himself. He did not see the flood himself but a man told him that the river had changed on account of having followed a ditch somewhere at San Miguel, but he did not see it himself. Between Alamitos and Tres Alamos the channel of the old river was quite wide. As he remembers the river, it was 100 yards wide. By what is noticed now it is perhaps about 80 yards wide. When they got to Tres Alamos they just followed the railroad track and came very far on the railroad track. They walked quite a distance, and they walked to New Canutillo. At the place called Vinton he cannot tell how many yards the present river is from the river that he first knew, but it is not far and at Vinton the present river is not very far from the railroad track, and at that place the old stage road was not very far to the east, it was near the river. Alamitos is very near to Anthony and New Canutillo is not very near to Old Canutillo, it is quite a distance. He cannot tell what was his greatest distance from the present river as he walked from Tres Alamos to New Canutillo. At all places between Vinton and New Canutillo he could see the channel of the old river, and being asked if he could see it from the railroad, he says, surely it can be seen because in certain places the railroad track is at the center of the river; and he pointed out that old channel as he walked from Vinton to New Canutillo and walking along there he could see it all right. When they got to New Canutillo they arrived on foot and they slept there. He does not remember the place but it was at a new building at Canutillo. The next morning when they started he went in

the wagon and was looking for the river as they rode along in the wagon. He could plainly see the bed of the old river between New and Old Canutillo because the river ran there straight. The old channel of the river between New and Old Canutillo is to the west, near the hills, and he could distinctly trace that channel as they rode along, in parts, and in parts he could not see it where it was off some little distance on account of the mesquite brush which had grown up where the river made bends going off from the hills. The river made some turns, small turns, this way and the other way. He did not mean that the river ran in a straight line. Being asked if the river ever ran in a straight line for any distance, he says, yes, and at the time he first knew it most of the distance from Canutillo Nuevo, as it was running near the hills. It touched the hills. In parts it would come in as the hills bent to the east and in parts no, but he could not say where. From Canutillo down it bent in the hills in some little rincones and when the flood came the river came nearer. He does not remember where they got salt above White's Ranch in the early days and he never heard that they hauled salt from that region to Paso del Norte and to Chihuahua. As heretofore mentioned the salt beds of which counsel must have heard were not in this region at all, but were much farther east. After they left Canutillo Nuevo he does not think they got off the wagon any more, but they could plainly see the channel of the river all the way down while riding in the wagon. From Anthony to White's Ranch there are two bridges on the river, one at Canutillo Nuevo and one at Piedras Paradas. This is probably a mistake for Piedra de Amolar where there is a bridge as many witnesses have stated. As they rode along from Anthony to White's Ranch Mr. Van Patten rode in the wagon and surely he could see the old river as they all saw it. The witness used to point out to him and tell him "There it is", and he said, "Yes, it is". The old channel

from Canutillo to White's Ranch there are willows, there are tornillos. A mile below Old Canutillo the present river is not very far from the railroad track. He cannot tell how far but you could see from there the water in parts and you could not see it in places because the willows had grown considerably. Between New and Old Canutillo you can see the present river from the railroad track, it is quite far, but you can only see it from there at some places and you cannot see it in places on account of the willows and of the cottonwood trees and it is quite far from the railroad track. Being asked, in Question 540, if he cannot see it how does he know whether it is quite far or very far, and he says, because he has an idea of where the river is and because there are places where you can see the water quite far, you can see the water at those places quite far and at others you cannot see it. He knows where the station of Montoya is. A mile above Montoya the present river is not very far from the railroad track and you can see it plainly there in places. Counsel then tells him that he is talking about one place a mile above the switch called Montoya, and he says, right at that place he did not pay any attention. They were looking for the old river from the wagon and all of them were in the wagon. There were two wagons. He does not know who rode with him in his wagon: The wagons were full. In his wagon were men whom he did not know very well, they belonged to the towns down below, but there was Mr. Jose Garcia and Jesus Arvizu whom he knew. Mr. Van Patten was not in his wagon, nor Mr. Austin, and Mr. Reber was walking and Mr. Baker was not in his wagon, nor Mr. Chaves; and they camped that night where they called it the white house. (This must not be confused with White's Ranch or White's house, but as some of the witnesses show it was a house near the Piedra de Amolar which was far below White's Ranch.) White's old house was to the east of the railroad and was between the railroad and the wagon road.

White's house was east of where the present paved wagon road is and it is near; the ruins of the house are there. There is no house there any more. There are some jacales near the hills there. They are not where White's old house was but east of that place. White's old house was more or less about 50 yards from the bank of the old river. The next day they crossed that bridge that is there at Piedras Paradas. (This is evidently a mistake for Piedra de Amolar as there is no bridge at Piedras Paradas.) They were four days showing the river, one day on the west side. They traveled all day on the other side of the river. It was three or four days, he does not remember exactly how many, but one day only on the west side. They had dinner on the other side near Piedras Paradas. That night they arrived at Canutillo. They traveled quite a long distance to the north and then took the road across to the bridge at Canutillo Nuevo. He had never been on that side of the river before and he was not showing them anything over there. Mr. Van Patten asked him if he knew those places over there and he told him, no. He made a journey on the west side of the river on one occasion only, when the Texans were at Dona Ana and he came on horseback to the El Paso fiesta. He traveled at night and at dawn arrived at Piedras Paradas. He and an uncle of his were traveling together. At Piedras Paradas he saw the river from the top of the hills as the road went up to the top of the hills and they cooked their breakfast there that morning and he did not see the Piedras Paradas but his uncle told him they had already passed the Piedras Paradas, and he asked his uncle where are they and he pointed them out to him. He did not see the river from where they took breakfast because the place was full of bosque. He thinks the Texans stayed at Dona Ana at that time two years and he was already married and was about twenty-five years old, more or less. In passing along that night he did not encounter the river at any place or see the river and

could not hear the roaring of the waters and did not encounter any old river-beds along that road. The road went through the bosque. He heard the name of the Alto de los Cuarones mentioned, but he never knew where it was. He may have passed Amoles but he does not know. They passed there at night. It was very dark and very cloudy. When he was showing the river on the west side, he did not go to Old Amoles and he heard only the name of Corral de Trosas. When they turned east they went to New Canutillo and made that whole journey on the west side in one day and they slept at New Canutillo. It was quite late when they got there. He made a declaration the day following at New Canutillo and he made his declaration to Mr. Reber and Mr. Baker. Mr. Baker took down in writing what he said and he left Canutillo to go home the same day. He does not know whether what Mr. Baker wrote was in English or Spanish. He did not have a typewriter with him. Mr. Van Patten and Mr. Reber were present when he gave his declaration, but he does not remember if Mr. Austin was present. Mr. Austin cooked dinner for them on the west side of the river. Mr. Austin went back with them to New Canutillo and they got supper at a Mexican's house and he was paid for his services at Canutillo and his railroad fare.

On re-direct examination, on page 1276 of the record counsel calls his attention to his having testified that he crossed a bridge at Piedras Paradas and asked him if he meant Piedras Paradas or Piedra de Amolar, and he answered, Piedra de Amolar and that there is a bridge there. He remembers the place where there is a bridge in the road running west from Anthony and north of that place the old river-bed is cultivated and planted between that road and Alamitos, and when he was at that bridge he looked up towards the place where Alamitos was. He is then asked to look at plaintiff's Exhibit No. 1 to see if he can recognize it, and he says he cannot see very

well, but he has never used glasses. Counsel hands eye glasses to witness and he says he does not recognize that place, it looks like a fog, he cannot distinguish it. A long way off he can see but not near. When he went to show the river there was a man in the party that they called the Apache and his name is Dionicio but he does not know his surname. He is known by the name of Apache because he was a captive. When they were traveling along the river the Apache was ahead, always ahead and talking all the time. The first night they slept in a new house at the place where the brick kilns are. When they were coming down in the wagons they went very near the place called Canutillo Viejo and they went across the railroad. He remembers at that place in the early days he saw a jacal made of poles, but when he went to show the river recently he did not notice the place where those houses had been and did not pay attention. On that trip they went over to see the place called Duraznito and went across the railroad on foot. At the place below Duraznito where there is a brick house and the old brick kiln they passed by and they were going on foot there along the railroad track and they passed near by. He traveled himself nearly all the time along the track and began to walk along the track from Tres Alamos. From Tres Alamos to the place where he slept the first night he walked the whole distance along the railroad track and from there towards White's Ranch the next morning he traveled very little on foot. He was not tired but Don Eugenio told them to get on the wagons. At the places above White's Ranch which he called salitral there is alkali there.

On re-cross examination, he says he cannot tell how far it is in miles from where they camped the first night to New Canutillo. On page 1278 of the record is a sample of useless cross-examination unless the object of counsel was merely to worry the witness. Duraznito is below Old Canutillo and below New Canutillo. He does not believe

that the present wagon road crosses the railway tracks between Anthony and White's Ranch. He never heard the name Tres Alamos until recent years. He had heard the name of Tres Alamos mentioned but did not know what they were or where they were at, but he knew the location of Tres Alamos when he went to show the river. It was then that he knew it. In the early days there was nothing to impress Tres Alamos upon his mind. When he first saw Old Canutillo there was no house there. After the first trip he made up he came back the following year, he and an uncle of his, driving some oxen and the house was then there. The man was not there but they said that it belonged to a man named Salado. He does not know whether the family were there or not, he never saw them himself, his uncle told him. He did not know where Uranga lived and did not hear where he lived. He did not know where the Indian doctor lived and never heard of him. He did not hear of Chapo Reyes and did not know where he lived. On his first trip he never heard of any person living between White's Ranch and Alamitos, nor of Gualdarama living there, but he heard it afterward. He may have lived there in the early days but the witness does not know. There might have been a settlement or a house on the east side in the early days and he not have known of it because sometimes they traveled at night and that might have been the reason why he did not see them, but he did not see them in the daytime, but if there had been a settlement or a house or a farm on the east side in the early days he certainly would have known it. He never heard of a place called Frontera.

We now come to the testimony of

JUAN APODACA

which begins on page 1281.

This witness lives in Dona Ana and was born at Juarez which was called Paso del Norte at that time, in the year 1840, and he lived there until he was 7 years old and then went to Mesilla where he lived three years, and then went to Dona Ana. He remembers the raising of the flag at Mesilla and he was there at that time and went to Dona Ana one year afterward. He was about 14 years old when the flag was raised. When he went to Mesilla he traveled on the east side of the river and remembers of some places, and after that time he traveled up and down that road. He came back the following year. After he first went up there and before the flag was raised at Mesilla he made only one trip and after that he traveled up and down the river two trips each year, he and his brother who was older than he. They made those trips to take fruit which they used to take to Mesilla and sell it. They got the fruit from his relatives at Paso del Norte and they traveled up and down the river on the east side and never made any trips on the west side. At that time Mesilla was on the west side of the river and in going to Mesilla they crossed the river in front of Mesilla. He became acquainted with the place called White's Ranch and there was an American living there when he first knew that place, but he does not know who he was. That house was near to the river, about 50 yards from the river, and it was on a height above the river. The road which he traveled went right by the door of the house. Beyond White's Ranch the river ran on top of the hills because the river did not permit them to travel below. The river was leaning towards the east. He became acquainted with Alamitos which was only a stopping place where they stopped to give water. When

he first knew that place no one was living there. After three or four years when he passed there again, he saw a house there and it was called the Scott Station. It was a large house and a large corral and it was said that it was a stage station. The river was very near to the station and the station was near to the hills. The river after leaving Alamitos ran straight and then it made a bend towards where Anthony now is. Between Alamitos and where Anthony now is the river was near to the hills. The bend started towards the west and came back towards the east. He has recently revisited that place and could find the old river-bed from Alamitos down. After the bend came back to the east the river came right close to the hills. He did not hear any name to the place where it came to the hills. There were some cottonwood trees there and there are some trees there now. Below that place the river ran straight. At that time he did not see any lime kilns in that vicinity, but he has seen them lately. At the place where he has seen those lime kilns at that time the river ran straight and then formed a small bend. At the place where that first bend ended the river, when he first knew it, came right close to where the railroad is now. Below there the railroad runs now partly over the old bed of the river. He did not know the Alto de la Bruja in those early days. The river ran straight towards those ovens and then formed a small bend which ran towards the west and soon turned to the east and it came right to the hills, and that is the place where the railroad comes over the old bed of the river. He heard the Estero de las Sanguijuelas mentioned but he did not know it. He knows a place now called New Canutillo and when he first knew the river with reference to that place, it ran against the edge of the hills towards the east. He has seen a bridge near New Canutillo and the old river passed right where the bridge is now. He did not know where the ranch of

Jose Maria Garcia was. He did not know where there was a beaver dam at that time, but he knew it afterwards. It was the place where the river separated into two branches of which the larger one was on the east, and the two branches got together a little below near Duraznito. He knew a man named Doroteo Salado who lived at Canutillo Viejo and the river was about 50 varas from the place where he lived and his house was not far from the hills. He has recently revisited that place and found the place where that house had been. There is nothing there now but the ruins. He knew a spring about 20 yards from Salado's house and the road was about 200 yards from the house, more or less. The road was on the hills. There was a kind of a road or entrance leading to the house to go to water there. The beaver dam was below where Salado lived. There were not two branches of the river at the place where Salado lived, but they were a little below. He did not see any peach tree at Duraznito but an arroyo which he was told was Duraznito. At that place the river was narrow, not very wide, and it was about two or three hundred yards from the hills. From New Canutillo the river ran straight and it would strike a hill near where Salado lived and formed a bend towards the west and turned back towards the east again. Between those two places the railroad is now over the old bed of the river. Between the place where Salado lived and Duraznito the river ran straight leaning towards the east and ran towards the hills, leaning against the hills. From Duraznito to White's Ranch the river ran straight, and a little before getting to White's Ranch it formed a little bend and turned back again. Between Duraznito and White's Ranch the old river came near where the railroad track now is and was right where the track is now. The old bed is there yet. He remembers seeing a brick house and an old brick kiln between those two places when he recently visited the place and when he first knew the river it

passed right by where the house is and formed a little bend. He knew the Piedras de Amolar which are there at the white house at the bridge, that is, where there is now a bridge across the river. From White's Ranch to Piedra de Amolar the river ran straight leaning to the hills on the east. The river ran very near the Piedra de Amolar. From White's Ranch to Alamitos the road went over the hills. It would come down at several places where there was level land, but not to the river. He does not remember how many such places there were. There was only one road between White's Ranch and Alamitos on the east side of the river. He does not remember having ever traveled on the west side of the river when he was young. He never went to the old town of Amoles. He went to Amoles in 1877, at the place they also called La Union. When he first knew Mesilla it was on the west side of the river and the river changed from the east of Mesilla to the west side in 1862 or 1863. He remembers when the soldiers from Texas came to Mesilla in 1861 and they stayed there one year. The river changed after those soldiers were there. The river changed to the west side of Mesilla in '62 or '63 or '64. After that change at Mesilla the river did not run at Alamitos again. It changed and destroyed Old Amoles. He engaged in rafting wood down the river in 1868. They put the rafts in the river a little above Piedras Paradas and at that time the river was very far to the east of the Piedras Paradas. Prior to the time that the river changed at Mesilla he did not know of any change in the river between Alamitos and White's Ranch. He does not know why they called that place Alamitos, but there were cottonwood trees there, some scattered, and there were many on the other side of the river. There was bosque on the west side of the river at other places and as he was traveling on the east side he could see the bosque on the other side. There was no bosque on the east side of the river,

there was only tornillo, some near the river. As he traveled along the road on the hills between Alamitos and White's Ranch, in various places they could see the river and there were some places where they did not see because they traveled sometimes at night, and in the daytime, there were places where the river formed bends. They could not see it from the road because there was monte—brush. At the time that he rafted wood the river was all the time on the east side. They cut the wood on the other side of the river and made the rafts there. When he was coming down the river with a raft, the raft getting very near a steep bank he put his pole to the bank and pushed against it and it broke and he fell into the water and the raft came pretty near getting over him, but he got on top again. That was in front of White's Ranch at Piedras Paradas. At that time the river did not run near the Piedras Paradas but they cut the wood on the other side on the level land. At that time the river ran right by the edge of White's Ranch. They brought the wood in the rafts to Juarez.

After a recess on page 1290 it is stated that the cross-examination of this witness was continued, but the record does not seem to show that it had been theretofore begun.

On this cross-examination the witness says that he was born in Paso del Norte and remained there until he was seven years old and was baptized there, and when he was seven years old made a journey on the east side of the river and came down and went back the next year. His testimony is based on what he knew and saw when he was 7 or 8 years old. He does not remember what time of year it was when he went up the river. A brother went with him and some other people whom he does not remember. He does not remember of anything else which happened when he was 7 years old. In Question 175 he is asked a question that a

trained psychologist might find it difficult to answer, which calls for an explanation of how he can remember what he saw along the river when he was 7 years old and cannot remember other things that happened, and the witness answered that if he is asked certain things that he remembers he will see if he remembers them, but as to that, that is his recollection only as to that date. He evidently means that if he is asked whether he remembers certain things he can then see whether he does remember them. When he was 7 years old there was only one person living at White's Ranch but he did not see him and merely heard that one person lived there. When he was 7 years old Doroteo Salado lived at his house and he saw him there. Salado was a tall, slim man, and about 30 years old. The witness does not know what Salado's business was. He knows that he lived there only. At that time the Indians were running all around that part of the country, but the witness does not know what Salado's business was there. He did not have any interest in finding out where the river then ran. And being asked how he is able now to tell the places where the river touched the hills, he says, he can see it now. When he was 7 or 8 years old, he made no other journey in any direction except up and down the river. When he went up at 7 years old, they started from Paso del Norte in the morning. From White's Ranch they started during the day time, but he cannot tell the hour they left White's Ranch. They crossed the river at Muleros Ford having gone through the Canoncitos, and when he crossed the river he did not cross at Piedras Paradas because the ford was on this side nearer to White's Ranch. The ford was above White's Ranch. They left Juarez and went around to those mountains called the Muleros mountains and through the Canoncitos and then eastward to the Muleros ford and they camped that first night as soon as they crossed the river at White's Ranch. And being asked in Question 210, if he

remembers of that well at 7 years old, he says, he remembers of it as if it had taken place now. The next day they went to Canutillo and arrived there quite early and they stayed all night at Canutillo and Salado's house was there then and they found him there at that house as they went down to water, and they left Salado's house the following day in the morning and traveled during the day through that part of the country and camped at Alamitos that night. The Indians were staying in the hills to the east of Alamitos at that time, but he does not know how many. The Apache Indians stayed in the mountains and travelers that were found were killed and robbed by them. He cannot tell how many people were in his party, perhaps three or four, his brother was a grown man. Being asked who lived at Gualdarama's place, he says, he did not know that place and he does not know who lived at Scott's house at that time, but the house was there and he heard that it was Scott's Ranch. The river was not high. The next year he made another trip and crossed the river at Mesilla, and they crossed the river here at El Paso where we are now, and they did not cross in boats or canoes. On that trip down they started in the morning from Mesilla traveling in carts and there were four or five people along. He does not remember the names of those who came with them, with himself and his brother, and they were two days coming to Paso del Norte. They camped the first night at the Ollas de Agua and on that trip they passed by night from Ollas de Agua to Alamitos and the next day they came here. There was a house at Alamitos. He knew it was a mail station, but when he was 8 years old he does not remember if it was a stage post. He does not remember when the stages began running and he never saw any stage coaches. He never saw any soldiers or armies passing up and down that road, nor did he see any Mexicans bring a lot of Texans down to Paso del Norte, and never heard

of it, nor of Texans being kept in prison at Paso del Norte for some weeks. He heard the name of Salazar mentioned, but he does not remember whether he fought or not with anybody, but he heard of Salazar as a surveyor and that he had surveyed the river, but he did not see him. He never heard the name of General Conde. He does not know who built the monument at Dona Ana and he has not seen it. He never saw the monument but he heard that it was opposite Dona Ana. He does not know what it was built for. He never saw any American surveyors surveying the river and never heard of them. Being asked, if he ever saw any surveyors and soldiers camped at White's Ranch, he says he saw them, and he was then about ten years or more and they were at Canutillo and at Anthony, and they were camped there, but that was after the Texans were here, two years afterwards, they were coming from up above and that was when he was ten years or more. That is the only party he ever saw up there. He does not remember when White's Ranch was a custom house, nor when that place was called Fronteras. He knew James Magoffin at the Fort at Magoffinville. He knew Price Cooper. He does not know when they cleared a farm above White's Ranch and he never saw any farming land there. He never saw any farms on the east side of the river. He never saw an irrigation ditch on that side of the river near Canutillo. After he was eight years old he made several trips about 8 or 9 years afterwards, when he was living at Mesilla. From Mesilla he went to Dona Ana. He lived in Mesilla two years and that was when he first went up the river. He went to Dona Ana and left before the flag was raised. First he lived one year at Dona Ana and then came back to Mesilla and it was then when the flag was raised in the year '54, and in the following year he went back to live at Dona Ana. He does not remember when his father died as he did not even know him. He does not remember the year

when he made a trip on the west side of the river. He saw Old Amoles only after the river had destroyed it and there were then ruins of houses in '77. There was no river there then and he does not remember what year the river destroyed that place, but he went there about '77. There was a river running by the houses there but leaning toward the east. The old houses were not standing as the river overflowed the whole town. It is not very far from the ruins of the old houses to the river bank and the river then turned towards the east and struck where the railroad is now at Canutillo. He came to the little town of La Union and passed by Old Amoles coming to Anthony. The river as it passed Old Amoles turned a little towards Salado's house. When he was 7 or 8 years old he only paid attention to the river at the places where they used to stop. He did not stop at Duraznito then but he heard when he passed an arroyo of Duraznito. He never saw the peach tree. He first heard of that peach tree on his first trip, but he never saw the tree. Being asked why the river always turned to the east, he says, because all the time it was leaning towards the east and that was true in '77. Some places it turned towards the west but it always came back towards the east and that was true as long as he knew the river between White's Ranch and Alamitos. When he got to Old Amoles he was going to Anthony from Dona Ana. He came to La Union and stopped there and from there he took the road leading to Anthony. La Union is a little below Old Amoles. On that trip he did not go to Paso del Norte. He had to go to La Union and from La Union he had to go by Old Amoles as his business wanted him to do that. In Anthony then there was a store only and several other houses, but he does not know who lived there then and the railroad was there then. This statement makes it plain that he is mistaken as to the time when he says this was in '77, as the railroad was not built until after 1880. He

says he crossed the river opposite Old Amoles at a ford. In those early days he knew a man named Uranga who lived in Paso del Norte. The witness does not remember if he had a ranch and cattle between White's Ranch and Alamitos. He does not remember ever passing there when there was a house and a man living there herding cattle. He did not know a place called the bend of Uranguena, but he heard the name mentioned. On the east side he always traveled the hill road which was quite far from the edge of the valley. At this point on page 1300, counsel tries to force the witness to estimate the distance in varas, yards, or miles from the "furthest" point of the wagon road to the river, but the witness declares it is impossible for him to do it. He has gone only once to show the river, which was last month with several persons, but he does not know how many. There were two wagons. The chief of the party was Van Patten who procured him to go on this trip because he knew that the witness was an older man than himself, but the witness does not know how many years older. He has known Van Patten since the year '61. He first knew him at Las Cruces. The business of the witness is that of a farmer and he quit his business to come here because Van Patten asked him to come. He went to show the river after Christmas, but he does not remember exactly whether it was before or after Christmas. He passed Christmas Day at Dona Ana. He assembled with the others at Anthony and they started from Alamitos down. They were asked the names of the places that they knew and the others and himself told where they were. As a boy he had not traced the river as he was never examining the river then. He cannot give the names of the witnesses who went with him to show the river. He remembers two or three only who were Apolonio Alvarez, Juan Marquez, Jose Garcia. Mr. Van Patten was there and the Commissioners who were Mr. Baker, Mr. Chaves, Mr. Reber, and Mr. Austin.

He heard from up above that they were Commissioners. They went with him to Alamitos and they questioned him at Alamitos. He does not remember that Van Patten said he was a witness and where the river ran in the early days. If he said that, this witness did not hear him. He wanted them to show him the places that they knew themselves. After they had been to Alamitos they went to Canutillo on foot, all of them. All along the channel of the river. They all were walking together. All of those who were walking there said "This is the channel." All of them said, "This is the channel." Mr. Van Patten asked if it was, and they said, yes that it was, and they were showing him the channel. The following quotation from the record on page 1303, will show some of the difficulties of the interpretation of testimony:

"Q. 410. Did Mr. Van Patten walk along and say to the witnesses this is the old channel of the river?

"A. Yes, sir.

"Q. 411. And you would say, yes?

"A. Sure we said it was because we knew it."

There can be no doubt that the interpreter in translating Question 410 made it sound as though Van Patten had said to the witnesses "Is this the old channel of the river," instead of asserting that it was. Attention has been called to similar mal-translation in the testimony of another witness. The Commissioners said nothing but just walked along. They did not take down notes of what he said there but did at Canutillo. From Alamitos to Canutillo they walked in the channel of the old river all the way. They did not get out of the old channel because that was the business that brought them there. They walked all the distance from Alamitos to New Canutillo. Some small portion they walked on the railroad track. In those places the railroad track is

right along the middle of the channel of the old river. They would walk within the channel of the old river. They slept at New Canutillo and when they started the next morning they went on foot and were in the old channel all the time. They came within the channel of the old river to where it takes a little bend and went to a house there, a little brick house. They came as far as Canutillo Viejo. In the answer to Question 438, there is an obvious error; as it reads in the record, it is "We could go along the old channel at places where there was water with the exception of that, we came all along within the channel." It is clear that the witness meant that they could go along the old channel except where there was water. They followed all within the channel of the old river, but before you get to White's Ranch there is water and they could not go into the water. After they passed that water they came within the channel of the old river because that was what they were doing there and they did not ride in the wagon at all from Alamitos to White's Ranch; with the exception of the drivers of the wagons all of them came along on foot. Juan Marquez was walking on foot most of the time. The witness thinks all of the time, but he does not know if at any time he got in the wagon. Jose Garcia did not walk all the time as he got sick once in awhile and went back to the wagon. All of those who were not sick walked the whole distance from Alamitos to White's Ranch, and he knows that is so. Mr. Reber was walking all the way and Mr. Chaves, and Commissioner Baker, and Mr. Austin, and Mr. Van Patten. Mr. Austin did the cooking for the party and all that walking too. They had no difficulty whatever in finding the channel of the river which in some places was a plain deep channel. In other places where it was not plain they passed them, as in those places where they could not see the channel it was places, when the river rose it made something like a playa; and they always walked

in the same direction until they struck the channel where it made the turn. The first of those places where they could not find the channel was not very long, turns or bends that the river used to make. It was not as large as a mile at any place where they could not find it, but a half mile, more or less, he is not sure. There were bends in the old river. When he first knew it, it was a crooked river as it made several bends towards the east, then as it went towards the east it changed back towards the west, and then it turned back towards the east. It made a bend toward the west a little below Canutillo Nuevo whcih was neither very long nor very short. Canutillo Nuevo was above Canutillo Viejo, but he cannot estimate the distance. That bend was between New and Old Canutillo. It was very wide from east to west, but less than a mile. It may be as much as a half mile, it may be not, he does not know; not as much as half a mile from where the railroad now is, it was very near from where the railroad track is. Between New and Old Canutillo he walked in the middle of the old channel, but he cannot tell the distance from New Canutillo to Old Canutillo. He might make a calculation about the distance if he paid attention when he was showing the river. He was paying attention to the points of the river but not to distances. He was paying attention in some places to the location of the old river to the railroad this side of Tres Alamos. He heard the name of Tres Alamos long, long ago, when he was a young man. Those trees, those alamos were very small then. He had not heard that name applied to any particular place until these late years, but it is several years since he heard the name Tres Alamos applied to any place, more than five years. And being asked "Ten years?" He says he does not know and he could not tell the number of years. A gentleman of those who were showing the river told him the name Tres Alamos applied to this place and that was the

first time he knew where the name applied to the place, about a month ago. He had heard that there existed such a place as that by that name, but he had never seen it before. He did not know anything of Gualdarama when he was a boy, nor about La Bruja heights, and he does not remember when he first heard of La Bruja. When he was showing the river he did not hear that name mentioned. He does not know anything about the estero called the Sanguijuelas. There were several esteros near Canutillo when he was a boy, one was this side of Tres Alamos. He does not remember of one this side of New Canutillo. If there was one on this side of Salado's house, he does not remember it. When he first heard of the beaver dam he was about 14 or 15 years of age. He does not know if there were any beavers there as he never saw them and never examined the place, but afterwards when he saw the place he thinks there were quite a lot of beavers. He did not see them but he saw the place where the trees had been cut down by the beavers. He went to where the trees were cut down but he did not look at the dam itself and he does not know where the dam was. You could see where the beavers had cut the trees from the edge of the bank of the river. They cut them on the west side of the river at the edge of the water, but the river was running towards the east all the time. It ran to the east until it got to White's place and this side of White's house at Piedra de Amolar is where the canon is that the river followed, and the river will never change its course in the canon. Some places the river was pretty deep and the banks were very high where it struck the hills. Where it did not strike the hills the channel was not very deep, perhaps it was waist deep and in the shallow places four or five feet deep. It did not take a very big flood to go over the valley. Those big floods would fill the holes and the lagoons in the valley, but all the time that he knew the river it did not create

any new channels. He was about 15 years old when he saw where the beavers had cut down the trees, but he does not remember what year that was. It was long after the flag was raised. When he saw where the beavers had cut the trees it was after the Texans had come, about two years after, and the river was still at the beaver dam and it is there now. It has run by New Canutillo all the time. On page 1310 by the sort of cross-examination which there appears, the witness is led to say first that the river changed at New Canutillo and that it is not there now, and then that the river is near New Canutillo and has been near there all the time. It is difficult to say whether this was due to confusion of the mind of the witness or to some errors in interpretation. It was near Salado's house until the river changed and on account of the change it is not there now. He does not know how many miles the river is from Salado's house now, he did not see it. When they reached White's house the second day they crossed the river on the other side on the following day, they slept there at night. White's house was to the west of the railroad 40 or 50 yards, more or less. They located the spot. Then in answer to Question 554, he says that the house was to the east and adds that he cannot tell exactly whether it was east or west of the railroad. He was there where the house was, but he did not pay any attention to the railroad at the time. White's house was to the west of the new paved road, but not very far to the east side of the railroad fence. He is then asked in Question 564, if it is to the east of the fence that runs on the west side or to the east of the fence that runs on the east side, and he answers, the fence that runs on the east side; and counsel in the next question then tells him, then it is between that fence and the railroad track. To which he answers in the affirmative. At White's house the paved wagon road is on the west side of the railroad track. After staying

all night near the bridge at Piedra de Amolar, they crossed the river the next day and went up above. Being asked, what he went for, he says, they were going back home already and they went on the west side in order to show the old places, those who knew them. He did not know them himself, and he did nothing on that side. All of them went on foot looking for places that were known before and nothing else. He spent but one day on the west side of the river. He does not remember how far north they went, but they traveled until they got opposite New Canutillo and then turned east to the bridge and did not go to La Union nor to Old Amoles. All of them went to New Canutillo and stayed there that night. He thinks it was two or three days after that he made his declaration. but a little further along he says that he made his declaration at New Canutillo when they were already on their way back. Mr. Baker took it down and Mr. Van Patten interpreted for him. They did not write it on the typewriter and he never saw it after he gave it to Mr. Baker and no one since then has read his declaration to him. No one has told him anything about it and since that time no one has reminded him of the names of the places and no one has discussed the facts of this case with him and he has not talked to anyone about what his testimony would be. No one ever refreshed his memory or discussed any matter with him in this case. He never knew Mr. Clancy until now. He has not talked to Baker, Chaves, Reber, or Austin about what he was going to testify. The party broke up at New Canutillo and some left for Anthony, some for Las Cruces, and some for Dona Ana, and he took the train back to his home. It was in '81 that the railroad came in from Dona Ana to those places in this country. He remembers it as if it had been yesterday. He saw them constructing the railroad. Prior to the coming of the railroad he continued to travel up and down on the east side about once or twice a year and

after that he has not traveled on the train. This was the first time he traveled on a train and the first time he ever traveled on the railroad. He never had the slightest desire to travel on a train until now that he was brought here and if it had been left to himself he would not have come on the train because he was afraid of the train. Lately is the only time he has been on a train. Being asked what this case is about, he says, he thinks it is a government business; and being asked if it is between New Mexico and Texas, he answers, "Yes". He is then asked if Texas has wronged New Mexico in any way, and he says, he thinks so. And being asked if he is for New Mexico or Texas, he answers that he is from New Mexico and that he is a witness of the state of New Mexico. Being then asked if he is in sympathy with New Mexico, he answers he has no sympathy neither one side nor the other. He admits that New Mexico brought him here and that New Mexico pays him. And being asked, if Texas had been trying to wrong New Mexico, he answers, that he has not tried to do anything wrong himself. He is a friend of Don Eugenio since the year '61 and they have been very good friends. They have never had any difficulty. He admits that Don Eugenion is working for New Mexico but he did not know that when he went to show the river. He knew that Mr. Baker, Mr. Chaves, and Mr. Reber were for New Mexico and on that trip there was no one representing the state of Texas. As he walked down the old river from Alamitos he did not see stakes set in the river-bed. Between Alamitos and Tres Alamos that old river-bed in places is quite deep and plain banks left there now. Now at some places the banks are obliterated with scrapers in order to prepare the land for cultivation. The old channel of the river has been obliterated with the scrapers south of the road which runs west of Anthony. He cannot tell if the people there used the scrapers for the purpose of hiding the old river-bed. Between Alamitos and that

wagon road he encountered an alfalfa field, but he does not remember a residence and a new barn. There are such buildings between Alamitos and that road east of the river channel, but not very far. He is asked in Question 673, if he did not go there to trace what appeared to be the bed of the river, and he answers, "No, sir"; but in answer to the next question he says that from Alamitos this way he followed the old channel of the river as the river ran straight. Being asked, how many channels of the old river there are between Anthony and the hills on the west, he says, he cannot tell because he has not examined them. He was looking only for the old channel of the river, not for other channels which the river had made. Being asked whether he was interested in any channel that did not go to the hills on the east, he answers, "I do not have any interest in looking for any other channel except the one I was looking for." He did not find any other channel running into or running out of that one. He is then asked in Question 682, if he never found a single place between Alamitos and White's Ranch where there were any other channels leading into or out of that old channel and his answer does not seem responsive, but it is, "From there on I found some channels that came to the edge of the hills and then they went to the edge of the railroad track." They kept on looking for the old channel and if a man found two channels he could tell very well which was the old channel because the old channel came near the hills and then left the hills and it was an easy matter to follow it. Being asked, if there were any other old channels as plain as the one he was following, he says, "No, it was the same old channel. There could not have been any other channel." Being asked what was the average width of that channel, he says, it was neither very narrow nor very wide, it was the regular channel of the river.

On re-direct examination, the witness says that when he first became acquainted with Alamitos nobody lived there then. Some years afterwards he saw someone living there. He remembers a little about the war between Mexico and the United States when he was about 6 or 7 years old. He remembers seeing the soldiers from the North at Paso del Norte, and he also remembers when the soldiers from Texas came to Mesilla and he was about 15 or 16 years old at that time. That was in '61 and he was born in 1840. It may possibly be that he was about 21 years old when the Texans came to Mesilla. He learned that he was born in 1840 because his mother used to tell him so. His mother was Ramona Apodaca and he was a natural or illegitimate son and did not know his father only by sight. Surveyors he did not see at White's Ranch but he saw a company of soldiers camped there after 1862, but he did not see any soldiers anywhere in the valley shortly after the war with Mexico when he was still a small boy. Those in 1862 were United States soldiers. He now knows Jesus Arvizu. He was with the witness on the trip recently to show the river. At times he walked a while and then he would go back on the wagon. There was another man in that party who was unable to walk, Jose Garcia. The first night on that trip they slept at New Canutillo. He saw some large brick kilns at Vinton and they slept right there where the brick kilns are. He then says they slept the first night at New Canutillo and the second night at Vinton, but he seems confused about this, as he then says the second night they slept at the white house near the Piedra de Amolar and the third night near New Canutillo, but he still says that he slept one night at Vinton but he does not know if it was the first night, but the day after that they slept at the white house at the Piedra de Amolar. He was paid two dollars a day for his time.

On re-cross examination, he was led to say that he remembers the points of the old river-bed as well as he remembers the places where he slept. When he works around Las Cruces as a laborer he earns one dollar a day for his services, that is, one dollar and board, and when he shows the river he gets two dollars and board and railroad expenses.

We now come to the testimony of

VIDAL MINJARES

which begins near the top of page 1322 of the record.

He says he lives in Las Cruces where he was born in 1847. His father was Victor Minjares and his mother Josefa Herrera. When he was a boy he made trips down to Paso del Norte and was about 7 or 8 years old when he made the first trip. He remembers the raising of the flag at Mesilla and he was there. The first trip he made to Paso del Norte was after he saw the flag raised at Mesilla. He thinks it was a short time after, and they remained at El Paso only as long as the feast of Guadalupe lasted. They traveled on the east side of the river both coming and going. He came with an uncle of his named Dauto Soto. There were about three carts. They started from Las Cruces in the morning and came to the place called the Llano Largo in front of Mesquite. There are some little hills there and the place of level land called the Llano Largo. This is in front of the railroad station now called Mesquite. They slept there that night and left the next morning and came to Alamitos, where there was a house and some cottonwood trees. They arrived there early and came a little beyond that place, a short distance, two or three miles, he thinks, where they stayed all night. The next day they went to give water at Canutillo and they came that night to White's house. There are a good many more names

now than there were then. He remembers Alamitos, Canutillo, and White's house at that time. They made other trips. They used to come to the fiestas; and during the time he lived at Las Cruces they used to come to the fiestas here every year. Afterwards they left for Tularosa and then he stopped traveling this way. When he went to Tularosa he thinks he was about 17 or 18 years old. He has never been married. They only came to Paso del Norte to attend the fiestas and never had any other business down here. The river passed right close to Alamitos. He does not know why they called it Alamitos, but it may be because there were some cottonwood trees there. There is only one there now. There were not many, only a few cottonwoods. You could see the other side of the river from that place and there was bosque there and that place was near the hills on the east, maybe 150 yards to the edge of the hills. After leaving Alamitos the river ran rather straight and then made a bend to the west and turned back to the east. He knows the place now called Anthony and from the bend of the river to Anthony it may have been from 200 to 250 varas, but he is not sure. Where it came back to the east the river went right on the edge of the hills. At that time he did not hear of Dos Alamos or Tres Alamos, but recently he has heard of that place. Being asked where is that place called Dos or Tres Alamos, he answered, at the place called Canutillo where was a ranch of a man named Salado. He is then asked, if he ever knew Alto de la Bruja. He says, that he did know the height but did not know that it was called La Bruja until now. That height was above where Salado lived and is below the place he has heard called Tres Alamos. He knows the place now called Vinton and he says the place where Salado lived was above that place. When he was a boy he became acquainted with the Estero de las Sanguijuelas which was right at the edge of the river and at that place there is a bend of the river

also. The estero was on the east side of the river and at that place the railroad is now where the old river was. The railroad now is in a good many places where the river used to be. He knows the place called New Canutillo near which there is a bridge and the river has never changed from there. It ran there at that place where the bridge is now. New Canutillo is a little below the Estero de las Sanguijuelas. Where Salado lived, is below New Canutillo. He knew of the beaver dam which is a little below where Salado lived; and at that beaver dam when the river was high, the river divided into two branches, one to the west and one to the east, and when the river was low the river ran all the time on the east side. Those two branches would get together some place below but he never went to the place where they got together again. At the place where Salado lived the river was all together and was very close to the house, not more than 10 or 12 varas. There was a little spring a little above the house near the bank and the water ran to the river. Salado's house was very near to the hills. He has recently been there examining all the old places in order to come here to testify. He found the place where Salado's house formerly was, but there are only the ruins there now. He knows the place called Duraznito now and when he was young he did not hear the name, he knew the place after that and the edge of the river was there and he believes that is the place where the two branches of the river used to get together, the ones which separated at the beaver dam. From the house of Salado down the river formed a bend and then turned to the east and at the end of that bend it turned a little to the west and the railroad is now on the old river-bed. He did not know Chapo Reyes, but he heard his name mentioned. He has seen his house. There is a place that they called the ranch of Chapo Reyes at the edge of the river. The road went on the hills opposite that place. It was below Du-

ramito and it was right at the place where the bend was. The river ran a little to the west and turned back to the east and the ranch is at that bend. That bend when it came back to the east came right to where the railroad is now. The Ranch of Chapo Reyes is on the west of the railroad. He knew where White's Ranch was. From the place where the old river came back to where the railroad now is below Chapo Reyes' house to White's Ranch the river ran close to the hills and very close to where the railroad is now. He knew Piedras de Amolar which are right at the edge of the river below White's Ranch, very near the beginning of the canon. The river ran down by the Piedras de Amolar which were right at the edge of the river. Between White's Ranch and those rocks the river ran on the edge of the hills. White's house was on a height and the river was below, but he cannot tell how high the hill was above the level of the river. It was quite high but not very high. The river was at the foot of the hill, very near, it might be 50 varas or less. Between White's Ranch and Alamitos the road on which he traveled went generally over the hills. It came down at some places but the river was below and did not permit the road to be there. The road was on the hills. It came down at several places and it would go across and go up again and run some distance and go down again and up again. There was only one road on the east side of the old river, but now there are two. He never traveled on the west side of the river, so he cannot say anything about that side. From the road which he traveled on the hills, at some places you could see the river plainly; at other places you could not, on account of the hills, but when the river was very high you could see the water at many places. His seeing the river was prevented because the road was on top of the hills and the river was close to the bank at the foot of the hills. On the other side of the river there was all bosque and

the bosques on that side of the river were very large, composed of cottonwood trees, tornillo and willows. On the east side there was no bosque. When he first became acquainted with the river it was between Mesilla and Las Cruces and it is now west of Mesilla. He remembers when the river changed there and he thinks it was in '62 or '63. The river made that change after the soldiers from Texas came to Mesilla. It was long after that when he moved away to Tularosa, it was 6 or 7 years after. He lived at Tularosa several years, he does not remember how many years, but he came back to Las Cruces in 1883 to live. The railroad passed Las Cruces in 1882. When he returned from Tularosa the road was being constructed but it was already below Las Cruces. He does not remember if he made any more trips to Paso del Norte after the river changed at Mesilla. The river does not now run near Alamitos. He does not remember when it stopped running there, but supposes it was when the river changed. He saw Alamitos about a year after the river changed at Mesilla before he left for Tularosa, but since he went to Tularosa he has never been there until the other day. When he saw that place before he left for Tularosa the river was not running there, then the river had changed. The river is not now running near where Salado lived, it runs on the other side now. He did not see the river running in the old river-bed near where Salado lived after the river changed at Mesilla. He did not know Gualdarama. He has lately seen what was pointed out to him as the house of Gualdarama. When he first knew the river it passed close to the place where that house is now. The house is on the hill where the hill commences to rise. He did not know Uranga, but he used to hear the name and at that time he did not know of any place which had his name. He knew it now, just recently when he was there.

On cross-examination, he says that he came here last Monday. He does not speak English and the only thing that he understands in English is when they call him to dinner. He does not know the name of the owner of the hotel nor of the hotel where he is stopping. There are four companions stopping at that hotel who came with him; one is Esiquis Trivis, Pablo Gamboa, Francisco Rel, and himself. They all came together. They eat at a hotel of which he does not know the name. Yesterday he gave his declaration in an office somewhere around here. There were present the four people who have come down and Mr. Eugenio Van Patten and no one else except a young lady who was writing. Yesterday he was not sworn. Van Patten asked him the questions and was the interpreter. This witness does not know what Van Patten has to do with this case but he procured him as a witness he thinks Saturday of last week. He has not made any other declaration, only that of yesterday and today. The questions asked him by Mr. Van Patten were the same as those asked today, but there may be some variations from the questions though they are about the same. Being asked in Question 176, if Don Eugenio corrected his mistakes when he made them yesterday, the witness says he did not, he only asked the questions and the witness answered them. He went to show the river on Monday when they came down. Monday and Tuesday they were showing the river with Van Patten and the surveyor. He thinks the surveyor's name was Steen, whom he knows well. The only persons along were the surveyor and Van Patten and the rest whose names he has given. He had never shown the river before. They began from Alamitos down. On Monday they came from Las Cruces to that place where they were going to show the river. He reached El Paso night before last or yesterday morning. He had not been in El Paso before that and was not here on Monday or Tuesday, but arrived yesterday

morning. It is a long time since he had been at El Paso, about two years before. He is positive that he had not been in El Paso for the last two years, but he was here once before that time in order to take some household goods belonging to a man. Before he gave his declaration yesterday he had not been talking with Don Eugenio in connection with the questions that are asked him now but he talked with him on other matters, and with no other person yesterday. He was with Van Patten yesterday and was with him before they were at the office. When they arrived here on the train they went to stop at their stopping place. Mr. Van Patten came to some place but the witness does not know where he came to. Van Patten did not take them to their room, he sent Juan Marquez to show them the room. He first saw Don Eugenio when he came after them to bring them to the office. They came with him on the train to the city here and they took the train at New Canutillo yesterday morning. Before they started on the train they took their breakfast up there and took their dinner here. He took breakfast with the four companions that were together. They were two days along the river. They began from Alamitos, they started from there and went in a wagon and took them on the other side of the river. They came to cross the bridge at Piedras Paradas and from there went up the road to Canutillo Nuevo to show the river. They camped the first night at New Canutillo and the second night they came back to the same place and slept there. There were two wagons, one hauling provisions and the other hauling them. Part of the time they walked and part of the time they were in the wagons. From New Canutillo to White's Ranch they did not ride all the way, they walked a long distance to find and examine things, and Don Eugenio was also walking. Don Eugenio did not tell them how many witnesses he had carried over that same ground, but the witness heard that he had carried other witnesses over that same ground. Van Patten told him nothing about

what the other witnesses knew, nor that he had already testified in this case and the witness did not know that Van Patten had testified. The witness heard of the case only Saturday when Van Patten came to see him about coming to show the river. That was the first time he ever heard anything about this case. He did not know anything about witnesses having been brought here to testify. Van Patten told him that he could get two dollars a day because at that time the witness did not want to come as he had quite a lot of business on hand and did not want to abandon it. Van Patten has been sheriff of Dona Ana county and has had several offices. In Question 230, counsel says to the witness that when Van Patten told him he must come, he knew he must come, and the witness answers that he came with Van Patten more on account of his being an old friend than any regard to the money that he was paying him. The witness was not compelled to come by order of any authority but he came on account of the friendship between himself and Mr. Van Patten. He is asked then, if he is under obligations to Don Eugenio, and he says, he is under obligations now since he gave him his consent to come. He has not been paid anything yet. They came in a little wagon when they went to show the river; it was sent back from Canutillo yesterday morning. It went back to Las Cruces. The surveyor came with one wagon and took them across the river by the new bridge at New Canutillo. They followed the road that goes on the other side of the river, that was on the second day when they got through examining the river. At Anthony they did not find two wagons awaiting them, but in the morning that they started from there the surveyor came with one wagon and the other wagon in which they had come down previously that was there yet. The little wagon in which they came from Las Cruces hauled the provisions and in the other wagon that they got at Anthony the other indi-

viduals went along. It had some wagon sheets and some quilts. They stayed all night at Anthony and slept there and from there the next morning came down to New Canutillo. After a recess until afternoon, counsel for Texas asked the witness if he had seen his companions since they adjourned and he answers in the affirmative. He is then asked, if he has seen Don Eugenio and he says he has not seen him lately, he saw him this morning when he was here. He has not seen Mr. Reber today. He does not know who Mr. Reber is. Perhaps he was present when he made his declaration, but he did not know his name. Counsel describes Mr. Reber as a smooth faced, bald headed man from Las Cruces and the witness says that he has seen that man in Las Cruces but he didn't know that his name was Reber. He asked the witness the questions yesterday when he gave his declaration. Counsel then asked him why he did not say so this morning when he said there was no one present but Don Eugenio, and he answers the ones who were asking the questions and the interpreter was Mr. Van Patten. Counsel then asks him why did he try to hide the fact that Mr. Reber was there, in Question 260; and he answers that he said that the questions were made to him by the man whose name he knows now was Mr. Reber and that he did not try to hide his name and it is only now that he knows that his name was Reber. He is then asked if there was any other American there besides Reber and Don Eugenio, and he says before he began there was another gentleman there, but he does not know who he is and he has not seen him here this morning. He only came in and went out. All of the witnesses were present yesterday when they were taking his testimony. And being asked if he heard the other three and they all heard him, he says they may have, that he did not hear what they said themselves. He says he was not present when they took the testimony of the others, that they took only his testimony yesterday and when they

got through with him they left the room and he thinks the testimony of the other witnesses was taken this morning. The three other witnesses were present when they took his testimony and they all heard him testify. They started in to show the river at Alamitos and they went on foot from Anthony to Alamitos. There is now only a tall cottonwood tree and it is one of the trees he knew as a boy. The others have gone. It is a tree that is right on the bank of the river and he saw that tree when he was a boy. There were others there. He thinks he can recognize this one as being there when he was a boy, because it shows that it is a very old tree. When he first saw it that tree was not as large as it is now, but it was a large tree already and he remembers that tree when he was a boy. He does not know how many feet high it was; it was high, however. He cannot calculate its height now either, but it is higher now than it was before. Being forced to make a calculation or estimate of the height, he says it is about fifteen feet to the top of the tree and he does not know how many years it has been reaching that height. He cannot tell the number of other trees which were there of the same size as this tree, but there were several. The channel of the river where the water was running was a short distance in width, 12 or 14 varas. From there they came down and crossed the new road which goes across the river. They crossed that road and kept on following the river. On the river there are no houses but there are houses outside of the river. They were following the old channel of the river. The houses were about 100 yards outside of the channel. They passed to the west side of those houses. There are some stakes one of which is in the center of where the river used to run near a tree. They found one stake as they were following and walking in the channel of the old river. It was in the center of the old river and there are stakes all along the edge of the river only on the east side and the stakes went to that place which they call Tres Alamos on

the east side of the river. Between Tres Alamos and New Canutillo there are stakes. They could not be in the center because there is water in it; and they are on the side of the east. Between Alamitos and Dos or Tres Alamos there is water in the river and they could not go in the water to the center, but they followed the bank of the river where the stakes have been placed. The river is not straight, it makes a bend there. The old river is the one that made the bend, the new river goes right straight to the other side. They were not examining anything about the new river and were following only the old river opposite Canutillo where the old river bends this way there the new river goes the other way. In that place which they used to call Old Canutillo, which now they say is Tres Alamos. Lately he has heard Don Eugenio and the surveyor and all others say it is Tres Alamos and that is where Salado's house used to be. Right at that point Don Eugenio said was the bend of La Bruja. La Bruja and Tres Alamos are new names to him. He had never heard them before. Don Eugenio asked him about Tres Alamos but the witness said that he had never heard the name before and he said that was the place called Tres Alamos and that is Salado's house. When he made the first trip Salado's house was already built. There were two jacales, he thinks three jacales. There was another family there by the name of Rival. Being asked if there was an Indian living there by the name of Rival herding goats, the witness says it may be he was the one. It was an Indian herder, an Indian the same as he is himself. He is of the same tribe of Indians that those from Ysleta are and those Indians also from El Paso, and they are called Ysleta Indians. He never lived with those Indians at Ysleta, but at Las Cruces where were some Indians of the same tribe and he was living where they lived. Don Eugenio married one of those Indians. Being asked if Don Eugenio is an Indian chief, he says that they have him now as a

resident among the Indians because he has always leaned to them. The witnes does not know if he had any charge of any kind when he lived at Ysleta. His wife was the daughter of the principal man among the Indians who is called the cacique, who is at the head of the Indians. His wife's name is Benita. Counsel then asked him if she and Don Eugenio took charge of the tribe when her father died and the witness says he does not know as he was not here at the time when the man died. From Alamitos coming this way they came on foot to New Canutillo and stayed there all night at a little frame house belonging, he thinks, to Mr. Bromback. The next morning they went across the river walking on foot to Piedras Paradas. Counsel asks him if he is not mistaken about that and he says that they crossed the river at Piedras Paradas and then came across on this side to White's house and from there they walked. Being asked how he reached White's house, he says they crossed the river. From where they crossed the river they went back to White's house. They went across the river on the morning of the second day. The surveyor went there to find out if they knew something about the river over there and the witness said to him that he did not know anything about it. He thinks that in the early days the river did not run there and he thinks so because as he traveled they saw the river always running on this side. It always leaned to the east. And being asked why he did not say that this morning, he answers that he thinks he said so. On page 1344 there appears some more useless cross-examination unless the purpose merely was to worry the witness. Being asked what he did on the west side of the river, he says the only thing they did was to travel in the wagon until they crossed the river to this side; that they had nothing to do on the other side because they did not know anything about it or he did not know anything himself. None of the others said that they knew anything about the river on the other side.

They got down to the bridge a little after twelve o'clock and when they reached White's house they stopped and cooked their dinner. Never before had he been at Piedras Paradas. From Piedras Paradas they could not see the old river but they could see the river that is running now. Counsel asks him how he knew that it was not the old river, in Question 373; and he answers because now water was running there and in the early days water was running on this side towards the east. In the early days he was never on the other side. At Chapo Reyes' house there was a bend which turned back towards the east. He is then asked in Question 376, if he followed all the bends of the river when he was a boy to see how it ran and he says he never had any occasion to follow them in the river, but they used to see from the road how it ran. He could not see the river from all places from the road; at some you could see it and at other places you could not. At some places the road was quite far on the hills and at other places as you traveled on the high road the river was right next to the hills. The first time that he made a trip he was very small. He thinks that he made a trip to Paso del Norte and back about one year before the Texans came and after the Texans left he made another trip. At that time the river was not running at New Canutillo in the same place. He then says in answer to Question 385, that he thought counsel was asking him about Alamitos, but at that last place that he asked him about the river has been there all the time. At the place called New Canutillo it has run there all the time where it is running now. At that place he does not believe it had changed because it is running there now. At Salado's house the river has changed and the river now runs very far from Salado's house, but he cannot tell the distance. From Salado's house you cannot see the river. At the Estero of Sanguijuelas you cannot see the river but you can see the direction in which it runs. At Sanguijuelas the river is somewhere

near the railroad track. He then says he understood that the question a little while ago was if the river could be seen from the old road and he says now that he misunderstood it. His head is not feeling very good now, he does not feel very well; and being asked if he wants to stop for awhile, he says, yes, he is feeling pretty bad, his head is feeling pretty bad. After being out of the court room for a few minutes the interpreter after talking with the witness in Spanish reports that he says he is feeling a little better and says he has a very bad headache and he further says he would like to stop now because he has a very bad headache, and wants to leave it until tomorrow. That he does not want to make any mistakes and would rather leave it until tomorrow when he would feel better, and thereupon on account of the indisposition of the witness, it being after three o'clock in the afternoon and no other witness available, the hearing was adjourned until the next morning at ten o'clock.

Upon the resumption of the hearing the plaintiff offered in evidence a certified copy of the record of the marriage of Longino Maestas on December 20th, 1865. Longino Maestas was one of the first witnesses who testified for the plaintiff and he testified that he was married when he was 17 years old. This certificate appears on pages 1347 and 1348 of the record. On page 1348 the record shows that the witness Minjares is reported to be so ill that it is impossible to proceed with his examination and the only other witness for plaintiff who is here is also reported to be too ill to be examined and thereupon the hearing was adjourned until the following Monday.

The cross-examination of Vidal Minjares was resumed on page 1349 of the record, and the witness testifies that in showing the river he spent the first night at New Canutillo and the next morning they went across the river on the other side and stopped at White's house for dinner.

He did not stop at any place on the west side of the valley, and the witness did not do anything there except that the surveyor showed them a stake which he said was on a route. He did not tell them the object of the stake, but said that he wanted to show it to them and then he would show them another stake at White's house that was almost opposite that one. The witness does not know what place that stake marked. On the other side of the river he had never traveled himself except on that occasion. He does not know why he was taken on the west side. They passed Piedras Paradas. They took the upper road from those piedras. He did not see the river from that road. They saw water on the west side but he thinks it was from the desague of a ditch; that was above Piedras Paradas. At White's house they were pointed out another stake on the east side of the road, very near the road. He does not know the object of putting the stake there. After dinner at that place they walked from White's house up to show the river. They walked all the way to Canutillo Nuevo on foot. In some parts the river channel is destroyed or obliterated, but at other parts they could distinguish where the old river used to be. Right opposite White's house the bank is noticed very well as it comes up along against the hills and they could trace that plain river-bed for quite a long distance from White's Ranch northward to the place called Duraznito. At some places it is deep enough to know that it was the old river. He is then told by counsel in Question 441, to show the commissioners with his hand how deep it was from the floor, and in answer as the commissioners have recorded, he indicates about 18 inches, two feet, and two feet and a half. Being asked how wide is the channel of the old river from White's Ranch to Duraznito, he says it is wide enough, that he could not tell the distance in yards, but it is wide enough to know that it is the old river channel. He refuses to make an estimate of the width and says that he is unable to do it. The banks are seen

distinctly enough to see that it was the old channel of the river, especially the banks all along the hills. When he was young he did not walk along the old river bank from White's Ranch to Duraznito, he always traveled on the upper road along the hills. They followed the road only except at the places where they used to water their stock. Between White's Ranch and Duraznito, when he was young, there were bends in the river, but not big bends. The only big bend was that at Duraznito. There was no bosque on the east side of the river. In those bends there were willows, jara and cachinilla brush. The Duraznito bend begins at the edge of the hills and starts to that direction (pointing northward). It goes to the west and then it turns back to the east to the edge of the hills. It starts from below Duraznito towards the west and then it turns back towards the east and then it turns again in that direction (pointing northwest), and then it comes back to the place that they call Duraznito. He cannot tell how long that bend is, but it is not very far. In walking from White's Ranch to New Canutillo there were himself and Mr. Van Patten, the surveyor, Esequio Travis, Pablo Gamboa, and Pancho Rel. Sometimes one of them was ahead and sometimes another. No particular one was ahead at any time. There are some stakes that they passed. Some of the stakes are on the edge of the old river and some are in the middle of the old river. They reached New Canutillo about half past five o'clock in the afternoon. They passed some brick houses at an old brick kiln. Being asked, on which side of those buildings he went, he says they followed the track of the railroad; followed the channel of the old river and the track is where the old river used to be. He says that the place is called Vinton, and being told by counsel, that he did not go to Vinton on the first day but on the second day, he says, that he thought he was being asked about Vinton. Counsel then tells him there are two places where there are brick houses, but

he then says that between White's Ranch and Duraznito there are some brick houses along the railroad track, to the west of the track, and they passed near those houses, and the old channel of the old river is where the track is now and he showed the river from the railroad track below Duraznito where those brick houses are. There were several of them but he did not count them. In going from White's Ranch to New Canutillo on the other side there are some farming lands but none where that old river used to be. There are some places where they have cleaned up. He has heard the name of Montoya several times but he does not know where it is. At this point on page 1354 of the record some of the questions and answers seem to be misplaced but the witness finally says there is another switch above but he does not remember the name of the place and there is a bridge that crosses the river near a large house that is there, which is a new house to him because it was not there in the early days. Below that bridge and that house there are some alfalfa fields on the west side of the old river. Along there they followed the railroad track following the old river. The railroad track is on the old river below the bridge. Below the bridge there is a bend of the hills. Where that bend ends that is where the old river used to be. Where they were walking along where that big house is the river runs there and it turns this way and runs to this hill and then it turns back and then it turns this other way again and follows the old river. That bend is where the house of Salado used to be. Between the bridge and Salado's house they were walking along the channel of the river. From Salado's house down where the railroad track is, is where the old river used to be in some places because the old river cuts towards the other side. In some places it is on the old channel of the river and then the channel changed to either one side or the other and the railroad could not follow the river. He first knew Duraznito many years ago, when

he was very young. He knew the name and knew the place as it was a stopping place called Duraznito. He did not see the tree himself. They showed him the place and said that is the stopping place called Duraznito. They did not show him where the tree had been. He did not see any peach tree there when he first knew that place. In the early days he passed by there several times. Duraznito was a watering place where people went to the river to water the stock. It applied to a point in the river not in the hills. The watering place, when he first saw it, was very near the hills. The old wagon road goes very near it. When he first went along he never saw anything like a mail coach. If they were there he never saw them. He did not know Chapo Reyes, but he knew the ranch where he used to live on the other side of White's house on the edge of the hills. It was a pole house or jacal. The witness does not know what Reyes did there, he was living there. He never knew of any one in the early days cultivating land on the east side of the river and never saw any irrigation ditch on the east side of the river. He never saw people cutting wood on the east side, nor any soldiers, nor surveyors camped in the valley or at White's Ranch, and he never heard of them. He has heard the name of Cumplido mentioned but he never saw the man and never saw where he lived. He heard the name of Price Cooper mentioned, but never knew the man. He heard his name mentioned at Las Cruces but the witness does not know where he lived. He cannot tell the exact number of trips he made before the flag was raised, but they came several times. When the flag was raised he was about 7 or 8 years old, he thinks. He made several trips before the flag was raised, with his uncle, but he does not know how many times. He came with an uncle of his once and perhaps two times. What he has testified here is his recollection of what he knew of the river after the flag was raised as he was already a grown boy and not from recollection

of what he saw before the flag was raised because he could not remember those things before as he had better understanding afterwards when he was from 14 to 15 years of age. He made several trips after the Texans went away for two or three years during the time that the feasts were held at El Paso. The last trip that he made on that road the river did not run at Duraznito, it ran towards the other side on account of the change made by the river, but he did not know anything about the other side. He could not see the river from the road. After the river left they did not give any water at Duraznito. Every bit of the distance between White's house and Canutillo they walked, all of them walked.

On re-direct examination he says that when he went to show the river, he crossed the river at the bridge near the Piedra de Amolar. He says he was not guided by the stakes in the old river-bed but he knew the river-bed because he knew it before and had knowledge of former days. The stakes were rather small, about that high, maybe two feet. He was able when he went along to show the river and point out on the ground where the old river ran. The old river may not be entirely complete but you can see it is there. Between White's Ranch and Duraznito the old wagon road was just on the top of the hills and you could plainly see the river at some places and when the river was very low there were some places where the river went close to the hills where you could not see the water, and when the river was full you could see the river all along there. There was only one road between White's Ranch and Alamitos on the east side of the river. There were some places where there were steep hills and there would be a cut-off to avoid the steep hills and the road would then go up again and join the main road. A good many years ago Mr. Van Patten was sheriff.

On re-cross examination, when he first knew the river it had very large floods which would come from the first of May on and the river overflowed and filled some anconas with water. When he passed the first time he remembers the river, it was low. He never did pass along there when there were floods, between White's Ranch and Alamitos. He saw the water from the road but he never crossed the river when the big floods were there. Counsel then tells him that he did not mean to ask about his crossing the river, and the witness says he understood him to ask if he crossed the river when the water was high. Only once he went along there when there were big floods, but he cannot possibly remember the year, but he was 10 or 12 years of age.

We come now to the testimony of

FRANCISCO REL

which begins on page 1360 of the record.

He says that he lives at Las Cruces and was born at El Paso, now Juarez, and lived there until he was 8 or 9 years old when his father took him to Dona Ana where they went to live at that time. After that he made journeys down to El Paso and back. The first trip which his father made was to bring freight that he brought down to El Paso and he brought the witness with him. He was even then very young and the year afterwards his father made another trip and the witness accompanied him on that trip. He remembers about the raising of the flag at Mesilla; he was in Dona Ana then. He does not remember how long after he went up there to live that the flag was raised in Mesilla and he cannot tell how old he was at that time. He remembers about his first trip up to Dona Ana and the following year after the second year his father came to El Paso to the feasts and brought him with him. After that his father

came alone and he did not come with him again. During those early trips he traveled on the east side of the river and not on the west side and he is not acquainted on that side. He became acquainted with the road and the river and various places and his father told him the names of the different places. He became acquainted with Alamitos where there was a cottonwood tree and some jacales. He did not notice particularly about the trees but there was one cottonwood tree there against the bank of the river, or right on the bank of the river. He remembers something of that place on the first trip and also on the other trips. The next trip he made by there, he thinks was before the flag was raised at Mesilla. At Alamitos the river was near to that tree which he mentioned, close to the bank. His father used to stop on the road on the hills and send him to that place to get water to drink. The first and the second trip also they sent him to get water. He cannot tell exactly the distance from the river to the road but it was not very far and it was not very near. The road was a little west from the hills at that point. Below the place called Alamitos the river formed a bend not very far from Alamitos. He knows the town called Anthony which is near to Alamitos and not very far. Alamitos is above Anthony. Between Alamitos and Anthony the river was leaning toward the hills. The town of Anthony is on the hills, on a height. Below Anthony the river was rather wide and always close to the hills. During those early trips he knew a place called Dos or Tres Alamos. In front of that place the river ran close to the edge of the hills and there were cottonwood trees close to that place. That was the place where the river came back to the hills and the railroad crosses the old bed of the river there now. In those early trips he became acquainted with the Alto de la Bruja and the river at that place was rather crooked, one branch ran in one place and another in another place. The Alto de la Bruja was a

stopping place called by that name, it was a height in the form of a hill, a stopping place. Below that place the river was leaning towards the hills. It formed bends. It would strike one hill at one point and another at another, and the road was on top of the hills. He knows the place now called Vinton and at that place the river was right there when he first knew it excepting those bends. They were not large bends, they were small. It came back to the hills on the east at Old Canutillo. He was acquainted with the Estero of the Sanguijuelas and it was above where the bend in the river came back to the hills, but not far above. He knows the place called New Canutillo. When he first knew the river it was almost adjacent to where New Canutillo now is. He has seen a bridge at that place and when he first knew the place where that bridge is, the river was right by there. He knew of the beaver dam. From the place now called New Canutillo to where the beaver dam was, the river ran straight leaning to the hills, but it spread somewhat upon reaching the beaver dam. The beaver dam did not go all the way across the river, only a portion of it. The beaver dam was on the east side and it was made of brush and trees like a bordo and had holes in different places. Below the beaver dam there were two branches. In front of Salado's height there were two branches, one went by the hills and the other went the other way. Further down they came together again near the place called La Bruja. He did not know Salado but he heard his name and he had a little ranch there at what they call now Old Canutillo. They called it then Canutillo, but there are two Canutillos now. At Salado's house the river was right where the railroad is now. The river turns there at the foot of the hills and there was a little spring there. He has been to that place recently and found the ruins of the house and the ruins of the spring. There is not any water in the spring now. The place where the ruins are is right close to the railroad. In the

early trips he made he became acquainted with Duraznito but he never saw any peach tree there, it was a stopping place called by that name where people stopped to rest and give water to the stock. He did not know anything about a ford at Duraznito. Between the place where Salado lived and Duraznito the river was right along the foot of the hills before it spread. There were various branches but the river ran mainly against the hills and on that account the road was on the hills. The river was not very wide at Duraznito. When he recently visited that part of the country he saw below Duraznito some small brick houses and a ruined brick kiln. When he first knew the river there was no brick kiln there then, but the river was right there at the place where the brick kiln is now. He heard the name of Chapo Reyes but he did not know him. His house was in the bosque near that place on this side of the river. In those early days he became acquainted with White's Ranch and the river was right by that place which was on a little height. The ruins of the old road are there yet where it comes down a steep hill near that ranch. He knew the Piedra de Amolar which was below White's Ranch. The river passed right in front of White's Ranch and from Duraznito to Piedra de Amolar the river ran near the hills when he first knew it. From White's Ranch going to Alamitos the road ran generally on top of the hills. It came down from the hills at a few bends to go up again. There was only one road on the east side of the river, but there were some cut-offs to avoid some steep hills which would be too heavy. There was only one wagon road. The people made use of those cut-offs. He did not know Uranga but he heard his name mentioned. He knew a place which was called Uranguena, a little below Tres Alamos; it was a little ranch that he had there, but the witness never saw the ranch. It was on this side of the river and not very far from the road. He is then asked what prevented his seeing it if it was not very far from

the road and he answers, "Because at that time I did not see it". He was told where the place was, but he never saw it. The river was near the estero which was below New Canutillo, above New Canutillo. He did not know a place called Arroyo de Artesa and he never heard of it. He did not know a man named Gualdarama. He has not seen the house of Gualdarama, but he qualifies this by saying that he is not sure, it seems to him that he has but is not sure. Traveling along the railroad on the hills the river could be seen from the road. At various places you could see the river, at other places you could not see it from the road on account of the bosque. From the tops of the hills you could see it, but from some low places on the road you could not see it. The bosque was of willows, cachinilla, and all kinds of brush. They were on the other side of the river, on this side there was not any bosque. On the other side there was large bosque. He knew that man Scott at Alamitos and he was there the first time he saw that place. The witness does not know in what year he was born. He does not know how old he is but his mother told him before she died that he was 67 years old and she died about six months ago. His mother's name was Manuela Hidalgo and his father Merced Rel. When he first saw Mesilla it was on the west side of the river, the same as it is now, but he saw the river running between Las Cruces and Mesilla when his father took him to the feast on horseback behind him on his horse and they crossed the river going from Dona Ana to Mesilla. Mesilla is on this side of the river. Now the river is on the other side towards the hills. He does not remember when the river changed from the east to the west side of Mesilla. He was not here when the Texans came to Mesilla, but was with his brother at Carrizal in Mexico. He was there 4 or 5 months. When he came back he came here and went to where his father was in Dona Ana. His father was among the first settlers of Dona Ana. He thinks that when he first went up

there with his father Dona Ana was a new place and that the settlement was being formed then. He does not remember whether the river changed at Mesilla before or after he came back from Carrizal.

On cross-examination the witness says that Carrizal is in Mexico and far from Juarez; that when his brother took him there he spent five days on the trip with carts, three carts. Other persons went whose names he does not remember. They have all died. One was Alejandro Martinez who died here in Colorado. The witness was kept at Carrizal four or five months. His brother was there to farm and during that time his father was at Dona Ana and they made a crop at Carrizal. They did not raise crops in four or five months, but they sent him back here. Two men from Presidio and from Ysleta traveled on horseback. They brought him with them. He was then something like 15 years of age. He does not know that that was while the Texans were here. He did not say that he was in Mexico when the Texans came. If he said that he made a mistake. He does not know about the Texans. He heard about their coming. He was at Carrizal when he heard that the Texans had come here. He heard it at Carrizal. He went to Carrizal and came back by the same road and passed through Guadalupe and Presidio. Presidio was on this side of the river and Guadalupe on the other side. He crossed the river above Guadalupe. Carrizal is on the other side of the river. Guadalupe and Presidio were the only two towns. There was a little town at Presidio. There was a town at Carrizal and his brother farmed land there from his father's brother. His brother's father was not his father. In front of Alamitos the hills are not very high. When he passed the first time there were hills about as high as that table (about 2½ feet high). There were hills higher than the table and others still lower. Those hills were not very far from the cottonwood trees.

Below Alamitos the river always turned to the east and touched the hills all the time because it was running along the edge of the hills. It did not touch all of the hill points between there and La Bruja. Some it did touch, but it made some bends when it did not touch them; at some places it ran straight to the next hill and at other places it always ran towards the side of the hills. When it made a bend it was towards the hills, and it touched the main points of the hills all the way. The river made bends in the direction towards the playas and then came back again. The playas are on the west side. His father stopped once to water at La Bruja. At some places along side of the hills you could water the stock and sometimes there was no water there; no, it was sometimes muddy but there was water there all the time. It was sometimes too muddy for the animals to drink. He does not know if there was any ford at La Bruja, he never saw one. He lived at Dona Ana many years but cannot tell how many and from there he moved to Las Cruces where he has been about twenty years, more or less. He moved there before there was a railroad. He does not know what year the railroad came and he cannot tell how old was his mother when she died. When his father died he was something near 18 years of age and was very small yet. On his first trip that he passed by there he heard the name of Tres Alamos as well as Alamitos. His father stopped at Tres Alamos which was a watering place. There is where the river cut off and a rinconada and it was not very muddy near the hills. His father always stopped at Tres Alamos, it was a regular watering place but he does not know if everybody stopped there. He visited the beaver dam only once. The beavers did not cut trees during the day, these animals worked at night, and if they heard anything coming they did not go out of their holes. He saw where they had been cutting and everything was fresh there near the river. They are animals that work in the water.

He saw the signs of where they had been cutting the trees. They were putting the trees across the bordo that they were building. Wherever those animals lived they made holes in the bank of the river. They did not have the whole river dammed, they could not stop all of the river. And being asked why not, he says, on this side of the river there were no trees. Those animals threw down trees that thick (indicating by extending his arms in front of him touching his finger tips). They threw down very thick trees. They would try to float them and put them on either side that they wanted to. The current was always on the east side. And being asked in Question 250, why would not the cottonwood trees float to the east side, he says, "Because the water ran below to the deepest channel of the river". Where the beavers left the trees they rotted and dried. He went to the beaver dam to see things as his father was following with the cart on the road; that was on his second trip and he was going up. There were Indians when the river used to run on the edge of the hills. When he went to the beaver dam he was not afraid that Indians might be hidden there. His father was traveling along the road and he was traveling by the side of him, he was not alone. There were four of them traveling and at that time they could not travel alone. Since he came to El Paso no one has been questioning him as a witness. Tres Alamos is above La Bruja and they are not very far apart. It is a very wide and long playa, but he cannot estimate the width of the playa, but more or less it is about as far as from here, or perhaps a shorter distance, to where the old Simeon Hart's mill is. It was on the west side. Bosque grew on that playa. Counsel then asks him if it is not at least a mile from the court house to Hart's mill and he says he does not know; but counsel asks the examiner Baker how far it is and Mr. Baker says it is about a mile. That playa was not so wide as it is now as there was a bosque, but the river was cutting

all the time towards the edge of the hills. He did not know Uranga. Being asked whether at the place where he heard Uranga lived the river touched the hills, he answers, it touched the hills a little, not very close to them but very near the hills, and as near the hills there as it was at La Bruja. He knew an estero on the east side of the river between La Bruja and New Canutillo which was not very long and he knew another below that place which was not very long either. Being asked if there was any other estero on the east side of the river, he says, "Small places or holes in the river that were filled with water when the river rose". At Alamitos when he first went there, there were some little bits of trees a little higher up, but right there where they watered the stock there was an old tree about this size (witness indicates by extending his arms touching his hands in front of him). He is then asked how thick it is now, and he indicates by extending his arms in front of him with the tips of his fingers about a foot apart, and he says the tree is right there next to the bank of the river and that is the first tree which he knew and there was no other larger than that, the smaller ones were very young trees, about that thick (indicating by extending his hands a diameter of about 4 inches, 6 inches, and 8 inches). They were on the bank of the river. There were no large cottonwood trees on this side of the river at that time. The hill at La Bruja was the same height that it is now; and being asked how high are they now, he says they have not grown any. The hill at La Bruja is not very high, it is a place where cachinilla and willows and all that sort of thing grows. He would not say that those hills are as tall as a man, they are playas formed by the winds which make them higher. At some places where the river comes in there are little hills about this size (indicating one foot high), and about this size (indicating about three feet) and so on. The Alto de la Bruja was made by the sand and the water both. The river did

run over the hills at La Bruja. In Question 304 counsel asks him if the river had been out all over those hills along where the railroad is now and where the brick kilns are, which seems to be a confusing combination; and he answers, "Yes, sir, at that time it was running there". La Bruja was not very far from where the Vinton brick yards now are but he cannot calculate the distance in yards, but it is not far. Alamitos is quite near, Alamitos is not far from Anthony, it is near. He says the old house of Salado was very near the railroad track and to the east side of the track as it is now. New Canutillo when he first knew that place was above Old Canutillo and not very far. The beaver dam was a little above the Salado house. The river divided below Tres Alamos, a little below Tres Alamos but farther down joined again a little below Duraznito almost where the old brick kilns are. There was not an island between the branches. The deepest channel was the one which was running near the hills and they separated below Tres Alamos near La Bruja but they joined almost at Duraznito and then the river ran altogether where those brick houses are. It came altogether from that point on. He never went from one of those branches over to the other branch, but he could see them well from White's house. Here is White's house, for instance, and there is another hill in that direction and from that hill you could see the two branches of the river. Being asked if they came together at White's house, he says the river was running at White's house altogether and from the hill near White's house he could see both branches very well, but the river right there was all in one body. Duraznito was below Salado's house. At New Canutillo when he first knew it they were building a town there. There was a man who had a mill there. He saw the mill afterwards and that is the town they were building then, but on the first trip there was nothing of that then there. He came from Las Cruces to that mill to buy flour, but on his first trip to that country

there was no town there, nor at his second trip, but when he made the third trip they were building it then. There is a bridge there now over the river and the river runs under the bridge. The mill was not very far from that bridge, above on the hill. It was a steam mill. No one lived at Duraznito when he first saw it and when he went there later he did not see anybody. Sometimes he would stop there to water the stock and sometimes not, but he never saw anybody living there. When he first went to the place now called Old Canutillo Salado was living there. He only saw Salado once. He had his little ranch there. He was alone, he did not have his family there. One lived there in great danger from the Indians. He was a farmer and had a little bit of a farm at his house. As the river ran there the lowest parts on the river is where he planted. He planted corn, beans, watermelons, he did not sow any wheat nor have any fruit trees but some vegetables. He had a horse but the witness does not know if he kept any goats or sheep. Chapo Reyes lived inside of the bosque. At this point on pages 1380 and 1381, counsel insists upon his estimating the distance of Reyes' house from the railroad track, but the witness refuses to do so. At Salado's house the river is now quite distant from the hills, but it is near. The river runs in this direction from the river as he first knew it (pointing southwest). At the Estero de las Sanguijuelas, the river now runs towards the side of the hills. After two or three questions and answers it appears that the witness was speaking of the old river, and counsel is asking about the present river. The witness then says the present river is near the Estero de Sanguijuelas and near to the old river-bed. He said yesterday he knew where Uranga lived which was near the river and on this side. He did not have a farm; when the witness saw and knew the place it was a little ranch and he did not see any farming lands there. He did not go to the house. Being asked if he knew where the house was he says everything is

very different now to what it was before. When he was a boy he did not know where the house was. Chapo Reyes lived a little above Duraznito. He went to show the river during the last week and went with the surveyor and Mr. Van Patten. He came to show them the river and they did not come to show it to him. Being asked the names of the other men who went with him he gives the name of Esiquis Trivis and speaks of this other boy who looks like an Indian but he has forgotten his name. There were only three of them. They started to show the river from Alamitos. They came to Anthony on the train and started to show the river about eight o'clock in the morning from Alamitos. There is nothing at Alamitos now that he remembers when he was young, but a tree that is below and by that tree he was able to locate the place. There are ruins of houses there now near the tree right there on a little hill. They are ruins from the houses that were there then. When he first went there, there were two small jacales. Scott lived in them. When the witness first saw the place Scott was not living there yet. There were other men living at the little houses. He does not know what they were doing. There were Indians in that country at that time and it may be they lived in the mountains, but he does not know where they lived. His father stopped quite a little way from the river in front of Alamitos on the second trip. He passed with his father by that place and that was the only trip he passed by there with his father. After that he passed there when his brother was taking him down below when he was 15 years old. He does not know what was the stopping place above Alamitos and he does not know any stopping place between Mesilla and Alamitos. After they found the tree at Alamitos they came down the road on the other side of the old river. That road goes along the edge of the old river and they went along the road from Alamitos to Tres Alamos and the Indian walked along the road with them and Trivis also walked along the road. Then the witness

says that man's name is Bidal; and Van Patten and the surveyor walked with him from Alamitos to Tres Alamos and the road was on the west side of the old river. They did not find anybody at Tres Alamos, but they found the ruins of the old river and three trees. He does not know if they are the same trees he knew as a boy, they are now bigger than they were before. He remembers the three trees as a boy. On this side there were three trees and no more. When he was a boy those trees were small. He knew that place then as Tres Alamos because it was a stopping place. He knew where Gualdarama lived, but he did not know him. When he was a boy it may be it was a stopping place, but there was no house then at that time and there was not a lime kiln there when he was a boy, nor a place called Vinton. He did not know the house of Pena when he was a boy and never heard of him. Afterwards he heard it said that Gualdarama lived there, but he did not know surely whether he did or not. He did not see a house there at that time. He first saw a house there recently but not before. Tres Alamos was above Vinton. When they got to Tres Alamos showing the river they went to New Canutillo and they walked on foot along the edge of the hills following the old river. The old river between Tres Alamos and New Canutillo was near the hills but he cannot tell anything about the distance of the hills from the old river. Between those points they walked next to the river in some places on the railroad track and in some places on the wagon road. They all went together in one party. Mr. Van Patten did not know anything about the river, it was they who were telling him about it and he did not show them anything. They went themselves to Alamitos because they knew the place. They came to Piedras de Amolar and from there they went up. They saw Alamitos first and they went from Alamitos down to the Piedras de Amolar on the east side of the river. (This was put in his mouth by Question 462, and is

wrong as shown further along.) Being asked in Question 463, why he did not go towards Las Cruces when he started from Alamitos, he answers that they were coming from Las Cruces and they didn't show the river between Alamitos and Las Cruces because they did not ask him to do it and they did not know anything about it. He made only three trips with his father on this road. At this point on pages 1386 and 1387, counsel succeeds in confusing the witness as to the movements of the party when they went to show the river. Being asked why they went over on the west side at New Canutillo, he says because one of the companions said something about the river on the other side, but he did not know anything about it. He said that the river flowed that way from Piedras Paradas but there was nothing. That was Pablo Gamboa. He did not mention him awhile ago when he was asked to mention all of the witnesses because he did not remember him. There were four of them instead of three. Gamboa did not give much of an explanation. The surveyor on that side did not do anything. That night they camped at New Canutillo. They went from New Canutillo to the west side and drove around this way and crossed the river at Piedra de Amolar and went back up to New Canutillo. Between Piedra de Amolar and New Canutillo there were several places they got off the wagon. They got off the wagon at White's Ranch and there they took their dinner. They got off the wagon this side of Tres Alamos and from there they walked all along the track to New Canutillo, there they slept. When they got to New Canutillo that evening it was very late. When he rode in the wagon all the others did and when he saw the places they saw the places. Between White's Ranch and Alamitos only once they got off the wagon at the Alamos. When he works he usually gets $1.25 a day and his board and he is now getting $2.00 a day and his board. He has known Mr. Van Patten many years and he is his good friend. The witness would

like to do anything he could to help him as he is a good friend of his. He is the first man who asked the witness to come and show the river, but the witness does not know what he has to do with this case. He never heard, and then he adds that he does not even know up to this present moment what is the object of this whole business.

On re-direct examination, he says that his brother who took him to Carrizal was Alejandro Martinez who was his half brother and is dead. His mother and the mother of the witness were sisters. At this point the interpreter Mr. Flores says that Mexicans always call a first cousin "Primo hermano" brothers. The witness then says in answer to the next question that he was not his brother but his first cousin. When he first went to show the river he went to the place where Salado's house had been and they were going along the track on foot. They left the track and went to the house towards the west side of the track. The mill at New Canutillo was built after the railroad was built. When he passed there through that country the first time, there was no house anywhere only the stopping places where they used to stop. It is a good while since he saw houses being constructed at New Canutillo and he does not remember whether it was before or after the railroad came. In going with his cousin to Carrizal, he started from Dona Ana and crossed the river once here, but then he says they crossed the river at Presidio and not here. When he went recently to show the river they were two days on the trip. They slept at New Canutillo both nights and the next morning they came here on the train.

On re-cross examination he says that Mr. Van Patten brought them here where they arrived quite late and he got rooms for them. He does not know the name of the house where he made his declaration, but he thinks it is the house of Mr. Reber who took his statement and

a lady took down what he said in writing. No oath was taken, they only asked him questions as to whether he knew those places or not. He had been with Don Eugenio two days as he said before. He told Don Eugenio what he knew when he walked along. The places that he knew of the old river and where it approached the old road and so on. Counsel then asks him, why did he have to give a statement, and he says, "Because they asked me to do it". At this point counsel devotes some time to questioning the witness as to the road to Carrizal and how many times and where he crossed the river, which seems of no importance to this case. The following questions and answers are here quoted as a sample of the cross-examination of these witnesses:

"Q. 568. Since we adjourned yesterday, did anybody speak to you about the flour mill?"

"A. No, sir. No one has spoken to me."

"Q. 569. Did you speak to any one about the flour mill that you went to when a boy?"

"A. No, sir."

"Q. 570. Nothing has been said about that flour mill which you went to often, as a boy and which was at New Canutillo?"

"Attorney General Clancy: I object to that as being an unfair and misleading question."

"A. No, sir."

"Mr. W. W. Turney: Why, he nailed himself to that stronger than anything—that he went as a boy, repeatedly, and on his second trip."

On re-direct examination, being asked if he said or intended to say that he went to the flour mill at Canutillo when he was a boy, he answers, "No, sir".

We next have the testimony of

SOSTENES GONZALES

which begins on page 1392 of the record.

This witness says that he lives in Las Cruces and here also and was born at Ysleta where he lived until 1896, when he came here to El Paso. Before that time he had made journeys up the river to Las Cruces and that part of the country. He was young when he made the first trip and they only went to Canutillo. He remembers hearing about the raising of the flag at Mesilla and this trip to Canutillo was about that time. He was at Ysleta when he heard about the raising of the flag and he thinks he heard of it after that first trip, after that trip to Canutillo. On that trip he went with his father who had some cattle there with a herder and they went to take provisions to him. The father's name was Juan Severiano Gonzales. He stayed at Canutillo three days. His father left him with the herder and went to hunt deer. The herder was Reyes Marquez. There were only some herders living at Canutillo then, no other people lived there. At that time there was only Reyes Marquez living there and he was his uncle; the other herders had come to El Paso and left his uncle in charge. The witness did not see any houses there then, but he saw houses there afterwards and he heard that a man by the name of Salado had a ranch there. He knew Salado but long afterwards here at El Paso. He did not know him while he was living at Canutillo. He knew the houses in which Salado lived up there. When he was there that first time the river passed right close to the hills and a little higher up was where the jacal was. He did not see any spring but they told him that there was a little spring there. At that time he went with his uncle around about the place but he did not show him the spring. He saw it afterwards. They went along the river on the hills

and he thinks they went as far as the place where New Canutillo is now. He did not see the beaver dam, his uncle told him that there was one. In going to Canutillo on that first trip he went on this side of the river and he saw a place called White's Ranch, but he did not see anybody there. It looked as though somebody might have lived there. They did not stop there. The river was right there close to that place. The house was on a hill and the river was very near the foot of that hill, 50 varas more or less from the house. In going up the first time to Canutillo he was told where Duraznito was. They merely went along the road. From White's house up to Canutillo the road was at the edge of the hills. The river was running along towards the east and was right adjacent to the hills. The road kept up on the hills because the river would strike the hills. After those three days they came back to Ysleta on the same side of the river. He went up the river again many years afterwards, when he was about 14 years old, and they went as far as Mesilla. The flag had already been raised there and he thinks it must have been about that same year because they were all talking about it. They went up on this side of the river and crossed it at a place a little below Ollas de Agua, a little below Brazito. They were at Mesilla only about two days and they crossed in front of Mesilla to Las Cruces and came by the Brazito Fort and along the edge of the hills. On that trip he became acquainted with Alamitos and his father told him that there was a mail station there. They stopped on the hills and he did not see it, they did not go to the river. There were some willows there where they stopped to cook dinner. They were traveling with a cart with oxen. They gave the oxen water at Canutillo and next at the place called Sanguijuelas above New Canutillo. That was going up, and coming back they gave water at the same places and stopped at Alamitos. His father left him on the road with his mother and he went to the

river to water the oxen. His little brother who was very small was with him. There were no other carts. Being asked what was the place called Sanguijuelas, he says the river formed a bend there above New Canutillo and he was told that that was the name of the place and coming from there they had to go around the bend to get to New Canutillo. The river made a turn at that place. The river was right there at the place called Sanguijuelas where there were leeches. At that time the river passed by New Canutillo where there is a bridge now, right where the bridge is now. The railroad is right there where the river was at that time. On those earlier trips he became acquainted with a place called Alto de la Bruja and the river was right adjacent there. His father told him that that place was called the Alto de la Bruja. At that place there is a brick kiln and the river passed right by there close to where the railroad now is. He is referring to the brick kiln at the place they now call Vinton and right in front of that brick kiln his father told him that the place was called Alto de la Bruja, from the brick kiln down. He does not know what La Bruja was, it might have been an animal or a fox or something else, he never heard what it was. In his early trips he did not become acquainted with a place called Tres Alamos but sometime afterwards he heard about it. He has not seen that place. A little below Alamitos the river formed a bend which they could not see, it was a little way off from the road. It came back near the road further down. At some places the river came to within about 50 varas of the road. It came very near the place where the railroad now is because from Vinton down it went right by the place where the brick kiln is now. Where that bend came back to the east it got so near that the railroad crosses now right where the bend of the river was. Below that place the river formed some bends. At Sanguijuelas the railroad runs right over the old river-bed. There was one bend below Alamitos above

Vinton. There were two large bends between Alamitos and Sanguijuelas, one was near the place they now call Vinton. The general course of the road which he traveled was at the edge of the hills and the road ran on the hills because the river was running right by the hills and they had to go on top. When the river was low to avoid climbing some high hills, they would come down in some low places. At first they went generally on the hills but when he went afterwards the road would come down in several places and then climb up again. There was only one road on the east side of the river. He did not hear the name for that bend near the place now called Vinton. He did not know the arroyo called the Arroyo de Artesa. When he was young he did not travel on the west side of the river, afterwards when he got to be a man he did. When he made his first trip up to Canutillo and stayed there several days he was about 8 or 9 years old. He has revisited that part of the country about three days ago. He knows Eugenio Van Patten but he has not been with him to look at the river above White's Ranch. He has been there at some other times, about two years ago. They went from here and were going to Las Cruces because he has his brothers there. He went with Van Patten to examine the old river between Alamitos and White's Ranch about two years ago. It was after he went to Las Cruces and they were coming from there this way and saw the river. There were several others went with him and Van Patten and they started from here and went as far as Anthony in an automobile and then came back from there. They came back the next day. He gave them something to eat there and then asked him how long he had known that place, Van Patten asked him. That is the place they called Alamitos, in front of Anthony. Alamitos did not look the way it did when he first knew it, but he found the place and knew it to be the same place which he had known when he was a boy. It was a stopping place and right close to it is where they built the town of Anthony

long afterwards. There is no river running now near Alamitos. He does not remember when it stopped running there. He went to visit Canutillo where he first went when he was a small boy. The river runs by there now. He found the place where Salado had his house and the present river is a little far from that place to the west. He does not know when the river stopped running near where Salado had his house. The first time he went to Mesilla the river was running between Las Cruces and Mesilla and it now runs on the west side of Mesilla. He does not remember when the river changed there. He saw the river many years ago at Santo Tomas. He did not know Santo Tomas but they told him that the river destroyed it and that they built another Santo Tomas. He remembers when the soldiers from Texas came to Mesilla but at that time he was at Ysleta and he did not go up there while those soldiers were there. Afterwards he went to Mesilla and then the river was on the west side of Mesilla and at that time he traveled on this side of the river, and at that time the river was not at Alamitos but was quite far from there. On that trip to Mesilla he gave water at New Canutillo close to where the bridge is now and he saw the river on that trip also at Duraznito and they went there to give water. He did not see the peach tree, but the river was about 100 yards from where his father told him the tree was. He did not know the Piedras de Amolar at that time but from what he hears he knows them now. Somebody has recently shown him the Piedras de Amolar. He did not see them when he was a boy. Being asked if Jose Maria Gonzales was any relative of his, he says there were several by that name and his father used to treat some of them as cousins. He does not know how nearly they were related to him. He did not know of any of those cousins who lived up the river in the vicinity of Canutillo. He thinks if there were any living there they were not his relatives or he would have known it.

On cross-examination he says that he is here now in El Paso with his daughter and has been here about two months coming from Las Cruces. He was born and raised in this country. He lived here about two years ago and has lived at El Paso about twenty years. He voted and paid his poll tax in this county up to two years ago. Being asked how old he was two years ago when he paid his poll tax last, he says he did not have to pay it then and he stated his age and he thinks about two years ago he told them he was 66 years old. He thinks he was born in '42, but is not very sure. On his first trip up the river he went with his father and was about 8 or 9 years old and went only to Canutillo and he did not make any trips beyond there until he was 15 years old, and no trips at all between those dates. There was nothing at Old Canutillo when he first saw it. They went to the river to water their horses. He was on horseback and his father was on horseback. He did not see anything there. That was the first time he ever went to Canutillo. He stayed there three days and his father went out deer hunting. His father was an Indian and he is an Indian born and raised at Ysleta. His father was not afraid of the Indians, but in answer to the next question, he says that his father must have been afraid of those Indians himself. Those Indians made war on everybody. He knew Price Cooper when he was a boy and he lived at Ysleta. They told him Cooper went up about Canutillo but he did not see him as he went. He was already a man when he heard that Price Cooper had gone there. He did not hear it when he first went up there with his father. There was no farm on the east side of the river when he first went up there, between White's Ranch and Canutillo. There were ancones for the stock where they used to pasture them. The stock went to water and from there went to some small little ancones and from there the animals went up on the hills. He does not remember very well how old he was when

the Texans came, but he thinks he was about 20 years old. He did not know the name of the person in command of the Texans. He heard of Colonel Baylor afterwards and heard he had been a Texan. Long, long afterwards he heard of Colonel Baylor. He heard the name of Sibley mentioned, but he does not know and does not remember when Sibley came. He did not hear the name of Canby. He never heard the names of those people. He heard of the battle of Valverde. He thinks he was about 20 years old then. He lived at Las Cruces for one year, but he did not live in Dona Ana. He lived only one year at Las Cruces, that was after the Texans came and it is not long since he went there. He lived there after the railroad had come. After the Texans fought at Valverde he made several trips to Las Cruces, because in '75 the government paid them to be Indian guides in order to follow Victorio. (Victorio was a noted Apache chief.) He went to Valverde at that time on several occasions. They made several trips and went by the Soledad Pass and did not come to the river. He made several trips after the Texans had fought at Valverde from White's Ranch to Alamitos and the river was still running at Old Canutillo. At New Canutillo where the bridge is now it ran. At Duraznito it went off a ways. During that time it left that place, it made a bend and when the floods came then it came back there again. It is not there now. After the battle of Valverde the river ran near White's house. He did not go with Van Patten to show the river. Van Patten took him from here up and told him he just wanted to make a trip and they went to Anthony and it may be it was for the purpose of his telling Van Patten where the old river used to run, but he is not sure what the purpose was. There were two Indians who went with him, Mariano Colmenero and Manuel Ortega. He thinks that he and Colmenero are about the same age. Ortega is older. He was only one day making that trip and has not been back since. He

did not go to Old Amoles nor to the Corral de Trosas, nor to La Union and they did not go to any place on the west side of the river. There were two Americans in the party, one was Mr. Van Patten and the other was one who was driving the machine. They stopped at White's house and went to where some chicken coops are a little above Montoya switch and they stopped at the old jacales that Salado had and then went straight from there to Anthony. They got out of the machine at Anthony and that was the only place. They went to drink some water at the jacales that belonged to Salado. An American had a little pole house near there and they asked him for some water. He does not remember very well what month it was but it was perhaps the latter part of January or February two years ago, in 1912. On the first trip he made, with his father to Mesilla, he did not go to the river at Alamitos but after that he went to give water at the river at Alamitos, and that was after the battle of Valverde, and the river was right there in front of Alamitos. Reyes Marquez was a pure Indian and was a grandson of the cacique whose name was Albino Marquez and he had cattle at that place where he visited for three days when he was 8 or 9 years old. There where his father left him with his uncle Reyes, there were some men from Juarez with cattle there, but at that time they were not there themselves, they had left for Juarez and had left his uncle Reyes in charge of the stock. His uncle was there by himself and nobody lived with him except those men who were in company of him. His uncle had cows there, no sheep nor goats. He knew a man named Cumplido who lived at New Canutillo as it is called now. He had a house there, an adobe house. First he had a pole house. The witness saw the pole house for several years and after he built the adobe house, he still left the pole house there. The ruins are there yet of those pole houses. He had a corral there and the ruins are visible yet. That corral was not there when he first went up

with his father and his father had been dead a long time when he first saw those houses and corrals there. There were no houses there when he went there first with his father. Right there where Cumplido's house was the river struck that place and made a kind of a bend there and then turned back and there at that height is where Cumpildo built his ranch. The witness did not know of any farm there. There was no valley land on the east side, the river was coming this way and that way and the road had to follow the bends of the river. The road did not twist and turn as the river did, as the river did not allow any travel near, but the road followed all the bends of the river. He has been along there when there was a big flood. Several times he went up and during the month of May when the river rises, the river overflowed and went again to where it used to run before, above and below Canutillo, and he saw that high flood three or four times. He saw floods of that kind here at Ysleta when he was 8 or 9 years old, but those big floods up above he saw them when he was already a man. When he made the first trip with his father it was in the month of August and there was not much water in the river then. He remembers it was not cold and that is the reason why he thinks it was in August. It might have been in June or July, but he is not sure of the month. At that age a man has not got any experience of any kind. That time that he went up there, there was no big flood in the river. When he went the first time he was very young. When they left Ysleta they started very early in the morning and arrived at Canutillo very early in the morning and stopped there three days, then they went back. His father went out hunting but could not find any game. He remembers much about that trip and remembers all the bends in the river. They were traveling at the edge of the hill and they were looking at the river and they could see all the big bends between White's Ranch and Canutillo. There was a bend from New Canu-

tillo, the first bend which comes back to the bank of the river where Salado's house was. Then below that is the other bend that comes back to in front of the Montoya switch. Those are two bends which compelled them to go up on the hills. Then this way towards Duraznito there was another bend which came back and struck where the house of Chapo Reyes was, that was all in regard to the large or big bends. He thinks the largest bend was that one from Canutillo Nuevo to the Salado house. They were traveling near by and could see the river from the road in some places. The old road is there yet. Between where Vinton now is and New Canutillo he followed this bend in the river when he first went up there. The road bent as the river bent. Right there at New Canutillo, there is where the river bends; also above there at the bend that they called the Sanguijuelas, there they could see the river because they followed the road running right along the edge of the monte. The bank of the river was there and next to the bank there was a monte and the river was on the edge of the bank. The signs are there yet. Opposite the brick yards at Vinton he has not seen the present river, he has always traveled on the railroad at night. When he went in the automobile they saw the river a little above the old brick kilns there then. From the brick kilns in that direction (pointing northwestward) they saw it. The automobile was running quite fast. When he was in the automobile he did not see the present river at the Estero of Sanguijuelas. He did not notice the river at that place. He only noticed the river where it is running at New Canutillo. They did not ask him about the old river at Sanguijuelas; and counsel asks him if he was asked about the old river at Tres Alamos, to which he answers that he has not heard the name of Tres Alamos but lately he has heard the name and he does not know where Tres Alamos are. It is a new name to him. In Question 354 he is asked, if the building of the railroad and the

completing of the paved wagon road changed the appearance of the country any, and he answers it is as different as the difference between heaven and earth, it has changed a great deal, where the railroad is now; it seems as if the river had run there centuries ago and it is not very long from the time that the river used to run there. Being asked, if he remembers the slough that existed near Salado's house when he was a boy, he says that an estero is a place where there is stagnant water that does not run, and the laguna is a long place filled with water; and he is asked if he knew a laguna in the early days near Salado's house, and he says, that bend is a lagoon. For a long time it had water in it, on the east side of the railroad, and on several trips he went there it was full of water and made them go up for a road. There is some water there yet. Every time that the river rose it filled it with water and the water stayed there a long time. Being asked if any part of that estero was on the west of where the railroad is now, the witness attempts to show counsel and says there is a bend where the railroad runs, is there now (indicating by pointing to imaginary objects), and the laguna was to the side of the hills, to the right side of where the railroad is now. From there, from New Canutillo it makes that bend to the railroad. He then asks for paper and pencil and attempts to make a diagram of the course of the river and the railroad, which appears between pages 1414 and 1415 of the record, of which the most that can be said is that it indicates that the river at a number of places was east of where the railroad now is. He then testifies that he does not speak English and understands English very little. The witness then on page 1415 plaintively says that he would like to know if they are going to keep him here very long, that he did not have much appetite at noon and did not have any dinner. He says his father pointed the place out to him and said, "Here is Duraznito", and they stopped at the monte near by,

but he did not go to Duraznito himself. He was over 15 years of age when his father died, he died in 1886. He does not know when they surveyed the river, he was not here. He went to make a trip to Lincoln and was there about one month. He heard of the survey made by the United States and Mexico when he was a boy. He heard it mentioned at the little saloon kept by Dr. Wall. Price Cooper was not dead yet. He is then asked in Question 376 where the river ran when he was a boy with reference to the court house in his town, and he answers, that when they came here to this place the road would come along the Franklin Mountain and went up along what was called Cahivas Bravas, and the road came down where they call it the Piedra de Amolar and that is the reason why he does not know how the river ran here, because they followed the upper road in order to make a shorter distance. Near Hart's Mill and Ysleta the river has changed very lately. Where the Union depot is now the river struck there at that place and it came back and struck where the Santa Fe depot is now, then it came near where the custom house guard house is, then it changed there and when he first saw it, it ran below the T. & P. railroad and arrived to Tornillo Street as they call it now and also where Overland Street is now and it went back and struck right where old Port Magoffin was. The old river he never saw near the court house, but there was another old channel of the river near the court house. He did not come this way at that time, when he was young. He is then asked in Question 381, how he knows about these other bends, and he says, they were made long afterwards, they were new changes where the river changed at the Union depot to the Santa Fe depot, the old depot of the Santa Fe. It ran to the custom house guard house not long ago. It is not long ago that the change was made. It went below where the T. & P. railroad is now and above the T. P. round house. It is not very long that those changes were made.

On re-direct examination he says that he remembers when Cumplido was living near Canutillo Nuevo and it was long after the war between the South and the North. He saw the river running at Alamitos after that war. He does not remember when the river went away from Alamitos but when he went to Las Cruces he went there to give water and he was then a man already. On the other side of the river when he first knew the river there was a good deal of bosque and there was a little bit of bosque on the east side. The river was running right close to the hills. He thinks that when Price Cooper went up there it was after the war between the North and the South. After the first time that he went to Mesilla he made many trips up and down the river long afterwards and he came two or three times. It was about 20 years after, he thinks.

We have next the testimony of

DIONICIO APODACA

which begins near the foot of page 1417 of the record.

He says that he lives in Dona Ana and was born and raised there. In answer to the next question, however, he says he was born at Mesilla. His family lived at Dona Ana, but when his mother was about to be confined she was taken to Mesilla and he was born there and he is 68 years old. There were ranches there at Mesilla. His mother was a Martinez. His father had a store in Dona Ana, but he was born in Mesilla at the ranch of Julian Martinez, his grandfather. He remembers when the flag was raised at Mesilla and he was living at Dona Ana. He was then about 12 or 13 years old. He is not positive but it was something like that. He does not remember in what year the flag was raised at Mesilla. When he was young he made journeys to Paso del Norte. His father used to get supplies here for his little store. He does

not know how old he was when he first came down, but he was big enough to take care of the oxen. They used to travel in carts. They came by the road on this side and he never traveled on the other side of the river. The road passed by the Fort at Brazito. They used to make a trip almost every month. As soon as they were getting out of goods they would come to get such goods as wine and peloncillo and he became well acquainted with the road and the river and the different places. He used to inquire of the places where they stopped, rested and camped at night and had something to eat. He became acquainted with Alamitos and there was a mail station there. He is not very positive but he thinks it was there the first time he saw that place. It was there afterwards. He is sure it was there when he made the second trip. An American kept that station whose name he cannot remember just now. They mentioned the name frequently but he does not remember it just now. He is then asked if the name was Scott, and he says it was. The river was rather near to the station. He passed by there afterwards many times and he is then asked from his knowledge of the place if he can tell about how far from the river the station was and he says it was near, but he cannot tell how many feet or how many yards or how many steps, as he never thought he would have to know, that he would have any need for knowing that. That place was a little far from the hills, but he does not know how far. When the railroad was being constructed he was taken there. Counsel then tells him that he means within the last month or two, and he says he passed by there. After leaving Alamitos the river formed quite a long bend and went to Canutillo. He only heard the name of Tres Alamos. He was told there was such a place below Alamitos but he never stopped at that place. He has known and still knows the man named Gualdarama and he lives here at the smelter now, up in the canon; and he knew of Gualdarama having a house up the river

on the side of the road toward the hills. When he first knew the river in summer time it overflowed the vega or meadow that was there close to some old lime kilns. The river would overflow and fill that place up. The channel of the river was below the hill where the house was and it was not far. Opposite that place where that house was the railroad track crosses the old river. He knows the place now called Vinton and when he first became acquainted with the river it flowed below that place. That was the large bend that came from Alamitos. The place where Gualdarama's house was was above where Vinton now is. He only heard the Estero de las Sanguijuelas mentioned. He knows the place now called New Canutillo. When he was first acquainted with the river with reference to the place now called New Canutillo, it was right where it is now, it never changed from there. He remembers an estero above where New Canutillo now is. In August and October that estero was filled from the river. Coming from there here the estero was on the left-hand side of the railroad. When that place would get full of water they would travel on the hills. The road on the hills was near the estero. He heard the name of Doroteo Salado and heard that he had a ranch there and he used to see a fat man there, but he does not know if he was the one. It was a ranch by the side of a little spring of water. He does not remember what that place had any name. As they passed by, they used to go to the spring to get water for their meals. The spring was near the house and the river was so near that the water from the spring flowed into the river. The hills were near there and that place was very near to where the railroad now is. The river passed right near the house where the little spring was. Between that place and New Canutillo the river was not far because when the river was high it would fill the whole place with water in August and October. The channel of the river between those places was not far from the road on which they were traveling.

The road was on the hills. He knows a place now called Montoya which he thinks is above where the little spring was, but he is not certain about it, as it is very different now. They used to stop at times at Duraznito to rest and sometimes to sleep. He did not know why it was called Duraznito, but it was so called. It was a little far from the river and the river at that place was rather wide Duraznito was not far from the hills. The river was close to the ranch and the spring and then formed a little bend to go to Duraznito, a small bend. He did not know Chapo Reyes but heard his name only and he did not hear where he lived. He knows where there are one or two little brick houses and some old ruined brick kilns below Duraznito. He saw them a long time ago. When he first knew the river it did not pass far from that old brick kiln. He knew a place called White's Ranch; the ruins are there yet. White's ranch was on a height and was close to the bank of the river. The river was right below the hill. The river went to Duraznito and then made a little bend; from there it went to the hill where the house of White was. Between those two places the river ran near the hills generally. Between those two places the railroad crosses various places where the river used to run. He knew the Piedras de Amolar. The road passed by going towards White's house. Those piedras are right at the beginning of the canon and there is where they used to climb the hills to go to Franklin. Between White's Ranch and the Piedras de Amolar the river when he first knew it ran close to the hills. He heard a beaver dam mentioned but he never saw it. Between Alamitos and White's Ranch the road they traveled went on the hills mostly, over the hills excepting where it went to Alamitos to the station. When there was a very little water the road would come down at some points below on account of being better ground there, and when the water was high it went always on the hills. It is many years since he traveled that road on the hills. From that road at

some places you could see the river; at other places you could not because there was tornillo and willows in the way. At Alamitos on the other side of the river there was large bosque. Between Alamitos and White's Ranch there were bosques on the west side—cottonwood trees and tornillos. On the east side there were no cottonwood trees but at some places there were tornillo and willow. He never traveled on the west side and on the side that he traveled there was only one road and they used to call it El Camino Paseno.

On cross-examination, he says that the road which he traveled on the hills was always called the Paseno road. He does not speak English or very little. He says the flag raised at Mesilla was raised by the Texas soldiers and he thinks it was about the time that the battle of Mesilla was fought. He does not remember whether the battle of Mesilla or the battle of Valverde was fought first. He remembers when the Texans were at Mesilla and Dona Ana. He does not know how far the Texans went. They passed this way (pointing northward), and they came from Texas. He does not know that they came through what is now El Paso and does not believe they did. He is not certain at what age he first came down to Paso del Norte, but he was large enough to herd the oxen. He is then asked, if he remembers distinctly what occurred on that first journey, and he says it is so many years ago he could not tell. He remembers some things that occurred because the men that came with him and with the carts told him something about it. His father came on that first trip, and all the time he came. After that first trip almost every month they made trips to buy things, for sometime, as long as his father had his store. He was about 30 or 32 years old, more or less, when his father quit having the store. While his father was keeping the store they always bought goods in Juarez, in Paso del Norte. It was called Juarez lately. He never paid any

duties in the custom house on the goods, his father must have paid them, and they were still getting goods from Paso del Norte after the Texans had gone. There was always water at the place where New Canutillo now is at some of the esteros that were there. When there was no water in the river there was water at Old Canutillo on account of the rains there. The river was almost next to Old Canutillo, very near to it, and the river was at that place as long as he continued to travel up and down the Paseno Road, and it was always at the same place, at the place now called New Canutillo. He continued to make trips until he was about 32 years old. When the railroad came along there, he remembers that he brought a wagon-load of barley. From Alamitos there was a large bend going down to Canutillo. At that bend there were cottonwood trees on the east side of the river, and on the other side of the river there was a bosque. Being asked in Question 171, if there was any cottonwood bosque on the east side of the river, he says, no there were tornillos and willows. Being asked in the next question, if he could see the river from the road at all places at that large bend, he says, he did not pay any attention at the time and he does not know to what distance that bend went to the west. The place where he saw the river was when he got to Canutillo, and between Canutillo and Alamitos he did not see the river, but he did not pay any attention to see if he could see the river or not from the road. He has not been to show the river to any one lately and he has told no one that he knew the river in the early days, and he has not told any one that he had traveled along there when a boy. Yesterday afternoon he spoke to Mr. Reber and had a few words only about the old river and he is the only person he ever spoke to about it. Being asked who told him to come to testify, he says Nestor Albidres who is blind, two blind men and one of them is Lino Jiron, Severo de la O who is not blind. Being asked who told him to come down, he says that he was here

himself and came here himself and came to see two of his nephews who were working at the Santa Fe yards here, and he came last week. Being asked if witnesses from Dona Ana who have testified told him that if he would make a witness he would get two dollars a day, he says, no, that he asked these blind men what were they doing here and they said they brought us here. He saw the blind men about two weeks ago and he has been here more than two weeks. Being asked if he tendered himself as a witness, he says, no, Mr. Van Patten asked him if he knew anything about it and he told him, yes, and if he would be placed under oath he would tell what he knew, but he did not tell Van Patten what he knew. The first he has told anybody was when he answered Mr. Clancy here this morning. He has not made a written declaration of what he knew about the old river. He does not remember in what year he was born, but he is about 68 years old. He does not know how old he was when he first came down the river. He first learned his age when he had some judgment of his own and asked his father about it. In making these trips up and down the road he used to meet the stage coaches on the road. He does not remember if they were running on his first trip. When he first knew Alamitos he is not sure that Scott's house was there then, but he thinks so. He was very young and a lot of boys went to see the Texans at their camp on the other side of Dona Ana. He does not remember when they built a monument on the west side of the river at Dona Ana. The Americans put up a monument on the other side of the river opposite Selden, but he does not know whether that is the monument counsel asks for or not. He never saw a monument on the hill west of Dona Ana. The monument opposite Selden on top of the hills on the other side of the river was built many years ago when the soldiers were there. He saw the monument when it was already built. He never heard for what purpose they built it. It may be it

was built out of stone. It was on the highest point of the hill. He does not know if it is there now. He thinks it is four or five years since he saw it. It is very far from Dona Ana. He does not know how many miles, but from Dona Ana to Selden Station you pay forty cents fare on the train. In traveling between White's Ranch and Alamitos he knew only Gualdarama's house and that man whose name he heard called Doroteo Salado, and he did not know of any others living between White's Ranch and Alamitos. He used to see cattle above Salado's house, but he did not know the names of the persons with the cattle. Below Salado's house there was a very short bend before you got to Duraznito. Below Duraznito he did not know if there was any bend as when there was water in the river they went up the hill. When they went up the hill road you could see the water in the river at some places and at others you could not. From New Canutillo this way there were two small branches of the river and they joined at a very short distance. He does not remember of any other place where there were other branches of the river. Near Old Canutillo he saw some bordos there, but not any water, and he does not know whether it was a ditch. He saw those bordos it may be on his second or third trip, he is not sure. He did not see the cleared land. He saw some bordos that looked like an acequia, but did not see any water there. He did not hear the name of Price Cooper living there, nor the name of anyone in connection with those bordos. He did not know a man named Uranga. He first saw Gualdarama's house a long time ago, a short time after his first trip. At the foot of the hills there was an old lime kiln, old when he first knew it. He does not know where they sold the lime. He never saw any other lime kilns along that road. He does not know where Gualdarama sold the lime. He did not know where Chapo Reyes lived, he heard his name only. He knew Juan Jose and Anastacio Cumplido, but he did not know their

father. He thinks they were in charge of some bosques up there on the other side of the river. They lived on this side. They were not there when he first went along. He knew them there long afterwards. Two, three, or four trips afterwards. In six months after he first went along he had made perhaps more than three or four trips. He is then asked in Question 269, if the Cumplidos were there in six or eight months after he first went along, and he says he is not sure as to the time as from that time to the present time it is quite a long time. He heard the name of Gualdarama's Ranch mentioned first and afterwards he knew him. He does not remember the date now. After he passed by there several times he knew Gualdarama. He knew him perhaps more than two years after he first passed there and when he knew him he knew him well and he knows him yet, and he has seen him at the smelter. He thinks he is the same man he knew as a boy up the river. Those houses belonged to him. The attention of the court is invited to that portion of the cross-examination of this witness which appears on page 1434 of the record. He does not remember when White's Ranch was a custom house, nor when surveyors camped at White's house, nor when soldiers camped at White's house; and in all his trips up and down the river he never saw any surveyors surveying and locating the river. If they were there he never saw them. Being asked where he camped when he was a boy between Alamitos and Mesilla or Las Cruces, he says, that they started from Dona Ana in the morning after they had their breakfast and they did not go to Alamitos to sleep and they slept on the prairie where there was grass for the animals. Those first trips he did not water the stock himself. After he got big enough to have reason they came to this side of Alamitos, but the river was very far there and sometimes they watered the oxen at Alamitos. The river was far from the road at Alamitos. At a certain time it was near to Alamitos but when a big flood

came down it changed from there. At a time when the river rose it made a change up above. He does not know where but it went the other way. He does not know when that change was made; he never saw it. He does not remember the year, he knows that there was a big flood. There were many big floods but one was the largest of them all. Every year the flood came down from May to August and at some places the river overflowed, at other places it went wherever it pleased. The flood always came down during the summer. Sometimes there was little water in the river and it rained above and the water came into the river and there was a rising of the river. He is asked, how deep was the average bed of the river, and he says he did not pay any attention and he does not know if it was as deep as the height of a man. The banks of the river were seen next to the hills but he does not know how deep it was. From Dona Ana to White's Ranch now the average depth of the bed of the river in some places is shallow and in most places it is shallow. At this point, at pages 1436 and 1437, counsel tries to drive the witness into stating what would be the average depth of the river from Alamitos to White's Ranch, when he first knew it and since, but without success. In the early days he heard the name of Tres Alamos mentioned only. No one lately has told him about Tres Alamos and he has not asked anybody where Tres Alamos is. He has passed by Tres Alamos, after. Don Eugenio did not, since he has been here, tell him about Tres Alamos and did not mention it to him. If anybody had said anything to him about it he would say so. The companions that were traveling with him said as they passed there, "There is Tres Alamos", but he never was there himself and never stopped there. As a boy he heard the name La Bruja but he never paid any attention to where La Bruja was. The last time he passed along the road between Alamitos and White's Ranch was when the railroad was being built. He has been along there this

year by the railroad train. When the railroad was being built he came down with a wagon-load of barley, that was the last time. When he was a boy there were loads of Indians in the country and that is why they had several carretas or carts traveling together. There were no wagons then, all carts and oxen. It may be that the Indians were living at the Organ Mountains; he never saw them, and he never heard of John R. Baylor, nor Sibley, nor Canby, nor Doniphan, and he never heard of a surveyor called Salazar. He never saw a peach tree at Duraznito. In the early days he did not hear of a place called Montoya but has heard of it lately. On this side of the river he never knew any Piedras Paradas and he never was on the other side. He never saw the Texans camped at Brazito. He is then asked if he knew a man in those early days named Gold Tooth and he says he knew one at Las Cruces who was called Jackson and has a gold tooth, he does not know if he was the same man he knew at Scott's Post, so many people have gold teeth. He first knew Van Patten many years ago. He did not know him in connection with the stage line. Scott lived at Alamitos in an adobe house. He does not remember if it had a rock foundation. The walls were made out of adobe. He does not know what kind of a roof it had. He was never inside that house. He is then asked if there was a grove of big cottonwood trees on the east side of the valley when he first knew that place, and he answers, "On the other side", and he is then asked, if there were any cottonwood trees on the east side of the valley, and he answers tornillo and willow. It may be that there were some cottonwood trees at Scott's Ranch, but where he saw many of them was on the other side. He does not remember if there were any hills near Scott's house. The main road came right to the house and the others went by there. He could not say how far, maybe 50, 30, or 40 yards, but it was quite near. At Anthony when he traveled up and down he never saw anything there, but

he saw mesquite trees there. Being asked if he remembers when an irrigation ditch was brought down by Alamitos to where Anthony now is, he says he saw some bordos there, but he does not know whether it was a ditch. He never saw any water there. He had to cross those bordos to go from the main road to Scott's house, but they were low. He did not see when they made those bordos. When he first saw them he was a man already and they were old bordos. He did not know the Island of Jose Maria Garcia and he does not remember if he ever heard of it. He heard the name of a town called Amoles on the other side of the river but he never went there at any time. He did not know a man living up the river named Gonzales and never heard of him. He never saw White and does not know what kind of a man he was. When he first went up there, there was an adobe house there, but he could not see how many rooms; it was a large house. Coming down this way the house was to the left of where the railroad now is. It was there when the railroad was built and when he hauled a load of barley. He is asked if he knows that is the same house that he knows White lived in and he says that is what they said, that is what he knew, all the people said so. He is then asked, in Question 397, how far the point is where the house was above the valley and he says, "I can show it to you if you want to. The ruins are there." Counsel then tells him he does not care to see the ruins but wants to know how high the ground was above the valley, and the witness says, he does not know, it is on top of a height, but he does not know how high it is. He never heard of Ben Dowell. He never knew Chapo Reyes, but he heard the name called. There was nobody living between White's Ranch and the little spring where Salado lived, or he never saw anybody. He does not remember that he ever saw anybody cutting wood on the east side of the river. He used to see carts loaded with wood but he does not know whether it was from this side or

the other side of the river. Cottonwood and tornillo. He does not remember if there were cottonwoods on this side of the river, but maybe there were one or another cottonwood trees. He does not know where that wood was going. In those early days there were persons living on this side of the river here at Franklin, but he does not know who they were. He passed through this place every month and there at El Paso Street, where El Paso Street is now, there was a cottonwood tree and there one turned this way. There was a ditch near that cottonwood tree. He does not know when that tree was thrown down. When he was a boy he did not know Sam Schutz and Joe Schutz, but he heard the name. He does not remember the name of John and Henry Gillette when he was a boy. When he was a boy he remembers how El Paso Street looked and one took that street to go to the ferry. He does not remember where the stage station was on that street nor where the saloon was on the corner of that street. When he was a boy he does not know how many people lived here. He heard the name of Magoffin called but he never knew him. They said that he lived down below but the witness does not know where. When he went to Juarez for groceries with his father he does not remember if there were any soldiers camped there.

On re-direct examination, he says that Gualdarama whom he knew was older than he and when he first knew him the witness was a man already and had been married one or two years. He was 33 years old when he was married. From the road where it passed the house of Gualdarama he does not know whether the river could be seen or not. He could see the estero there with water from the floods, but did not pay attention to the river. Juan Jose and Anastacio Cumplido lived at Canutillo, or he was told that they lived there and it was at or near the same place that Salado lived. When he knew the Cumplidos he was over 30 years old, and might have

been 34 or 35, they were older than he. Anastacio is dead and the other is living and lives at New Carrtillo. When the river passed on the east of Mesilla he supposes Mesilla belonged to Mexico. He does not remember when it became a part of the United States but he was in Dona Ana when he was told that a flag was raised in Mesilla by the Americans. He does not remember how old he was when he heard of that. He was not very large but he was large, he was not very small nor very large. It has been so long since that time that it is hard to remember.

We next have the testimony of

JUAN GARCIA

which begins on page 1445 of the record.

He says that he lives at La Mesa and has lived there about 40 years. When he was very young he lived in this town about four years. He was born in Juarez on the other side of the river and he lived there until he was 10 or 12 years old and then came here with his father who used to work for Juan Maria Ponce, the first settler of this place. That was long before the war between Mexico and the United States. At the time of that war he was on the other side. He remembers when the soldiers from the United States came to Paso del Norte. He saw them because they put their camps near their house at the place called El Real. He met one of the generals, two of them, one they called McKean. He does not remember the other one. He did not hear the name of Doniphan and does not remember anything about him. He does not remember what time of year it was when those soldiers came, nor whether it was warm weather or cold weather. He was about 15 or 16 years of age when those soldiers came here. When he was a young man his father used to employ him in taking care of

cattle, oxen and cows and in the farm farming. When those soldiers came from the United States he was engaged in such work, he used to work already. He was not old enough to do a man's work like a full grown man, but he used to work a good deal. He knew Simeon Hart and used to work for him at his mill and worked for him about three years. Hart was a major in the company at that time. There was a company camped here and he was a major of the company and he used to pay the soldiers. He supplied the forts from his mill from Las Limpias up to Valverde. He supplied all the forts with flour. The flour was taken in the government wagons. The witness does not know who built Hart's mill. When he came to work for him the mill was already there. After he worked for him three years he went back to El Paso. He does not remember how many years he remained there, but from there went to La Mesa. Mesilla was settled before La Mesa. He traveled up the river long before he moved from here. When he lived here with his father he made the first trip up the river when he was about 13 years of age, and they went to the Temascalitos plain. His father was sent to that place by his employer with burros to take provisions to some employes that he had there. It took them about eight days to make the trip and they remained at the camp three days. Afterwards he knew a place called the Ollas de Agua, they are a good deal higher up. After that first trip they went every year to bring the wethers for three years. He does not remember when La Mesa was first settled. Question 38 is, "But you say that was settled before La Mesilla was", and he answers, "Yes, sir". (Although a little before he had said that Mesilla was settled first.) He remembers when they raised the flag at Mesilla and at that time he was here to live, it was about 1853 or 1854. He is not positive as to the date. Before that time he had made three trips up and down the river. In going up he traveled on the east

side of the river and in those early days he did not travel any on the other side of the river. Many years afterwards he traveled on that side. He became acquainted with Alamitos. There was no bosque there, there were two trees on the bank of the river against which the river was running. When he first knew that place there was no one living there. Afterwards Scott lived there. Within the last year he has revisited that place and found the place which he knew as Alamitos when he was a boy. There is no river running there now. He does not remember when the river went away from there. When he first knew it, the river below Alamitos ran straight leading towards the hills, about a quarter of a mile from the river to the hills, from Alamitos to the hills. The road came right by the edge of Alamitos. Scott had business with the mail, postmaster. There was a mail station there and he thinks it must have been a postoffice. In those early days he knew a place called Tres Alamos, a little below Alamitos. It may be about a mile. There was a large bosque there on the other side of the river. The place called Tres Alamos was a little farther from the hills, it was quite far there. The road was on the hills. They used to go to Tres Alamos on their way driving the sheep where there was bottom land and where ever it got dark they used to sleep at the edge of the river. Being asked how old he was when he was driving the sheep, he says the first trip that he made his father told him that he was 13 years old. That first trip they brought some sheep from there and brought them here. From the place called Tres Alamos the river formed a bend. It was a very large bend. It was not very small. They used to call that the Ancon de la Bruja at that time. He does not know what La Bruja was but the old people who knew better than he did, used to say, "We are going to camp for the night at La Bruja bend". At that place the road was on the hills. Sometimes they used to camp in the hills, but when the river was low

they used to camp below the hills. At the Ancon de la Bruja the river was far from the hills. The bend commenced at Tres Alamos and went into the bosque. He could not see where the river turned because there was some bosque there and they could not see it again until it came close to the hills again. He does not remember the name of the place where it came back to the hills. He became acquainted with the Estero de las Sanguijuelas and the river passed near that estero which was much like a dam. The river came here and the beavers had a dam here and one branch of the river came this way and on that side there was another branch and this branch here (indicating the easterly branch) had more water than the other. The main canal of the river was on this side, there was a large estero there. The beaver dam was at the edge of the Estero de las Sanguijuelas. As a boy he knew a place called Canutillo. When he first traveled up there, there was one ranch there but he does not know who lived there. There were two jacales and another one farther down, near but below, which belonged to a man by the name of Salado, whom he knew. There were two houses above the house of Salado. Where those houses were the river was a little far from them. Those houses were right close to the brush on the hills. He knows a place which now exists up there called New Canutillo, which is above the other Canutillo where those houses were. Right near New Canutillo the river passed and when he first knew the river it ran right where the bridge is, near New Canutillo. Below New Canutillo the river formed a bend and then another bend, it formed a curve. That bend came to New Canutillo and came close to the hills again in front of the house of Salado. There the river was very near to the hills. It came very near to the house of Salado, about 150 yards from the house to where the river was. There were some little hills and on the other side of the hills was the river and near the bottom of those little hills there was a spring

of very good water about 10 yards from the river. The spring was about 200 yards from the house of Salado which was on a height. The road came over the hills to the place where Salado's house was and from there they went back again to the hills. They used to come down there to give water. When they did not come down to get water they could travel along on the hills and go by that place. In those early years he became acquainted with Duraznito which was above where Salado lived, but not very far. Duraznito was so called because there was a peach tree there, it was a volunteer tree. He saw that tree and it was about 300 yards from the edge of the river, and about that much more from the edge of the hills. At that place the river was narrow. He remembers nothing about a ford at Duraznito. He did not know Chapo Reyes at that time but knew him afterwards. He was between 20 and 26 years old when he knew him. He lived at a place above where Salado lived, not very far nor yet very near. Within the last year he has seen that place where Reyes lived. When he was a boy the river ran right close to the place where Reyes lived. There is someone living there now, but he does not know who. He was not acquainted with the wife and children of Chapo Reyes, but he did know Angela Hale and he thinks she lives there yet. He thinks she was his daughter. The place of Chapo Reyes was close to the hills. When he revisited these places recently he does not remember seeing where there are some little brick houses and the ruined brick kiln. In those early days when he knew the place there was no ranch at White's Ranch, but he knew it afterwards. At the time of his first trip there was no ranch there, it was a desert. When he first knew the river at the place where White's Ranch was afterwards it ran close to where the railroad track is now. From the place where Chapo Reyes and Salado lived down to where White's Ranch was afterwards, the river ran straight. From the house of Salado down the river had

no more bends, it ran straight to the Piedra de Amolar which was below White's Ranch and very near the beginning of the canon. He knew of a whirlpool below in the river which was a little above the Piedra de Amolar and it was called the Remanso del Toro, the whirlpool of the bull. It had that name because at night it made a noise similar to the noise which bulls make. At that time people used to take wood in rafts and if a raft dropped there it disappeared and they would never see it again. He never engaged in rafting wood down the river. He knew a place called Muleros. There was a great deal of tornillo there and they used to call Muleros from White's house all the way up to in front of Piedras Paradas. There were some tornillal there and grass and grass called pelillo and other brush. There were some large open places which were covered with grass which they called pelillo. From White's Ranch to the Piedras Paradas it was a long distance and that whole stretch of country was called Muleros. He remembers that this place here was called Franklin, but he does not remember when it was first known by that name, but it was so called before the war between Mexico and the United States, and before that war there were some ranches here belonging to Jose Maria Ponce. The witness was here four years and Ponce was the first settler who had possession of this place. Afterwards some other people came and took lands here. When Jose Maria Ponce lived here the place was called Franklin then, it already had that name. Jose Maria Ponce lived in Paso del Norte on the other side of the river. When he first knew the place where Salado lived, Salado was there already. The witness does not know when Salado had his house built. Between White's Ranch and Alamitos on the east side of the river the road which he traveled from White's Ranch climbed on the hills. At times they could come down to Salado's house to give water and when they did not want to go there they used to go to the ranch of

Chapo Reyes. They would come for water there and from there they used to get on the hills again and went on the hills until they got almost to Alamitos and the road came down there again. He does not remember when the house was built at White's Ranch. When he saw that house for the first time he was already a man grown and Mr. White lived there and he knew him. White had cattle there, not ranches, he had cattle, a good deal of cattle there. He never knew of there being a custom house at White's Ranch. The beaver dam did not go clear across the river and the river was on both sides. The dam was on the west side. When the river was low the river ran in the branch on the east side. He does not know whether those branches came together again or not. He heard about the battle of Temascalitos and was living at El Paso—Juarez, at that time. The soldiers from the United States came to Paso del Norte right away, about three days afterwards. He does not remember in what time of the year that battle was fought. (This battle was fought in 1846.) When Mesilla was first settled the river was between Mesilla and Las Cruces and Mesilla is now on this side of the river. He does not remember when the river changed there. He remembers when the dam at the mill at which he worked was washed away. It was destroyed only once, it has never been rebuilt. They built it again of rock and brush but not the way it was before of lime and cement. At the time it was washed away he was living at El Paso. He went to La Mesa to live afterwards. The dam was destroyed many years ago. He believes that the dam was destroyed 60 or 65 years ago. It may have been 60 or 70 years since the dam was destroyed and he has lived at La Mesa only 40 years. He remembers when the soldiers from Texas came during the Civil War. They came before the dam was destroyed. He does not remember how long, but he thinks they came about the time the dam was destroyed. He was a full grown man when he began to

travel on the west side of the river. When the flag was raised at Mesilla he was working at the mill of Don Simeon. Afterwards he became well acquainted with the west side of the river by the road. Being asked how the road went on that side of the river, he says on the hills, and then that as soon as they came out of the Canoncitos from there they came down a steep hill called the Poleo Questa, then they came down the low place at Muleros which went along the bosque up to the Piedras Paradas and from Piedras Paradas the road went to the edge of the hills and came down at Santa Teresa to the lower country and from there they went along the bottom clear up to Mesilla. The road used to pass by Amoles, La Mesa, and by Chamberino; and it went to San Miguel and from San Miguel to Mesilla. That road was the road that went through the Canoncitos. There was large bosque along that road from near the Piedras Paradas to Amoles. He knows a place called the Corral de Tapia and when he first knew that place from there you could not see the river. The bosque was very thick. The river was very far distant. Corral de Tapia was above the monte. It was not close to the bosque but was higher up. He became acquainted with the Corral de Trosas which was from the road towards the bosque. Going up, the Corral de Trosas was on the right-hand side and opposite that Corral the road was on the height and not in the bosque. From there you could not tell where the river was, they could not see it on account of the bosque which was very thick and dense. He knew the place called La Cobrena but that was on this side of the river, not on the other side. Cobrena on the east side of the river was below Vinton and he never knew a place called Cobrena on the west side of the river. He became acquainted with the town of Amoles. The principal man of the place was Don Simeon Enriquez. He does not remember the names of others but there were a good many people there. The river was very far from there

when he first became acquainted with that place. The people who lived there cultivated land. They got their water from a ditch which started away up, he does not know from where but it was not near. There was a great deal of farming land there. The farming land was below and in this direction, towards the east, towards the bosque. The town was at the edge of a height. The bosque was north and east. He then says to the west. The road came just outside of the bosque and there was a great deal of bosque. The bosque on the east from that old town was right there where they were clearing the land to plant. When he recently visited the east side of the river he went with Don Eugenio Van Patten and with the surveyor and with the Attorney General. He told him he was the Attorney General. The Attorney General for New Mexico then asked him in Question 218, "Did I go with you there?" and he answers, that he does not remember if he did or not. He is then asked in the next question if it was this gentleman, Mr. W. R. Reber, who went with him and he says he cannot see and does not remember very well, he is so old. He sees people today and tomorrow he hardly remembers them, he is getting so old. He does not remember the name of the surveyor but he is from Las Cruces. The name being suggested, he says it was Steen, and he pointed out the old river as he first knew it when a boy to the surveyor. He showed him the place where Salado lived and Las Sanguijuelas and La Bruja, and Los Alamitos and where the river ran at Duraznito, and White's Ranch. and at the place now called New Canutillo. He knows a new place which they call Vinton and he showed the surveyor where the river ran opposite that place and opposite the place which they now call Anthony. He found the old channel of the river very well and at places he found the bank of the old river-bed. There are some places where he could not find the bank of the old river-bed, but he could see where the old river was at those

places. There was only one road on the east side of the river and he never heard any name for that road. On the west side of the river the places had names but not the road. When he first traveled that road there was not anyone living between the Piedras Paradas and the old town of Amoles. Being asked what is the present condition of his health he says that he is now sick, that he suffers from his legs and from dizziness in his head and when people talk to him a great deal he becomes dizzy. Being asked if he wants to rest, he says he would like to get through so he can go home. He would like to go to his house. He is suffering a great deal here and cannot get cured in a strange place. He is so sick that Don Eugenio allowed him to bring his wife to take care of him. And thereupon the examiners took a recess until afternoon when his cross-examination began.

He testified that he had said in the morning that he remembered when the Texas soldiers came, but he does not remember the name of the commander to be John Baylor. He remembers when the battle of Mesilla was fought. He does not know where the soldiers went after that battle or if they went back to Texas. He does not remember that the Texans captured northern soldiers at San Agustin Pass. He does not remember the battle of Valverde. After the battle of Mesilla he did not continue to travel on the west side of the river and he had not traveled there before the battle of Mesilla. He traveled on that side of the river but long after the battle of Mesilla, when he was about 30 years old. After the battle of Mesilla he could not see the river from Old Amoles, nor from Corral de Trosas. At Piedras Paradas he saw the river about 22 or 23 years ago. In the early years he knew a man named James Magoffin who lived below in this direction, this side of what they call the Blue Fort. The witness was already grown somewhat when he knew Magoffin. His first trip up the river was after he knew Magoffin. He knew a man

named Price Cooper for some time at Ysleta. He does not remember when Price Cooper cleared a farm up the valley above White's Ranch. In the early days in traveling along there he never saw anything like people clearing a farm and digging an irrigation ditch. Everything there was bosque and then he said to counsel, "Did you ask me up on this side of the river?" and counsel answers, "Yes"; and the witness then says when he first traveled on this side it was all a desert, no one lived there, there was no bosque on this side of the river. When he knew the river as it used to run on this side of the hills there was no bosque there. As long as he saw the river it was running at the same place as when he first knew it. He cannot tell about the years that he saw the river. The first time that he saw it was when he was 13 years of age. He lived at this town here with his father for four years. The owner of this place had some herds at the place called Temascalitos and the father of the witness used to take provisions for the herders up there and the first trip when his father took him there he was about 13 years of age. When he first went up the river they did not even know Simeon Hart. At that time Juan Maria Ponce did not live here himself, he owned a ranch here and he lived at Juarez. The father of the witness was here for four years and he stayed with his father, he worked for Mr. Hart two or three years. His father is the one who worked for Ponce and not himself. His first trip up the river was long before he worked for Mr. Hart. He was about 19 or 20 years of age when he first worked for Hart. About that time he knew of some surveyors coming up the country to Paso del Norte to survey the river. He did not hear the name of General Conde, nor the name of Salazar, nor the name of Emory. He never heard of those names, nor the name of anyone in charge of a surveying party. He does not know when those surveyors came to Paso del Norte and he does not remember what occurred about

'51 and '52. He did not know a place called Fronteras. He never saw any of those surveyors at work. Other people told him that the surveyors were somewhere around but he never saw them. He does not remember when Mr. Van Patten first came to the country. The witness knew him at El Paso, Juarez, when he was very young and he was very young himself then. He does not know whether they are about the same age. When he first knew him, he thinks Van Patten was larger or taller than himself. When he first knew him, he does not know how old he was. He worked for an American that they called Don Agustin. He was very young, he was not much grown, he may have been under 21 years of age, the witness does not know. He does not remember if that was before or after they started to run the stage coaches and he does not remember when they first ran stage coaches. Being asked how old he was when he quit making trips on the east side of the river, he says he may have been about 16 years, but in view of all his testimony it would seem that he must have misunderstood this question. He goes on to say that he came here with his father when he was about 12 years of age and stayed one year here and then made his first trip up the river. Salado did not live there on his first trip, but he lived there on his second trip. Then he adds that he is not sure or certain whether he lived there on his first trip. They did not go to water there as the road was on top of the hills. They came down the road that came to Chapo Reyes' house, but Reyes did not live there on that first trip but there was a place where the road came down from the upper road. At that time he made only three trips on the east side and only up to Temascalitos. He did not go as far as Mesilla. Many years passed before he made the next trip which was after the Texans had come and long after the battle of Mesilla. He does not know how long after the battle of Mesilla, it was several years before he came on that road, and those

few trips that he made this way the river had already changed, it did not run in the same place. The river did not run at New Canutillo at the time of the last trip, but several years had passed before he had been there. After the railroad had been built he made but few trips from there down for the reason that he came to live at La Mesa and did not leave the place any more and when he came to Mesilla he did not take the road on this side but went on the other side. He went to La Mesa to live in the same year that the railroad was built. He did not know an island below Alamitos and never heard of one. Long after his first trip he knew the man Cumplido who had cattle up there and he knew him at New Canutillo. He did not know him anywhere else. The Texans had been there for a long time when he knew him and had gone. In those early days there were many war-like Indians, more Indians than people, and travelers made the journey at night time to avoid the Indians. Being asked if he ever made the trips in the night time to avoid the Indians, he says, no, that they never made any trips at night themselves as they would make trips with burros taking provisions for the herders. When it got late there they slept and coming back from that place they were herding this way the wethers. The wethers never travel during the night, only during the day. There were three of them driving the wethers and he was then a boy. His father was a grown man and the other man was already married. During all the trips that he made he never saw the Indians. He is then asked if he is an Indian and he says that he is and his father was an Indian and the other men with them were Indians; they were pueblo Indians, not the Indians who live in the mountains. Those mountain Indians made war on the pueblo Indians the same as they would on Mexicans or Americans. There were six men herding sheep at that pasture ground. The Indians lived in the mountains but used to come down once in awhile

in some places and sometimes in other places. He does not know whether those Indians were at the Organ Mountains or not, they lived at different points. They were seen when they came down on the road. At that place where they grazed the sheep there was a herd of three thousand females and quite a large herd of cattle. That grazing ground was quite far this way from Mesilla and above Alamitos, about a league and a half from Alamitos. When he went to visit that place he does not know but he thinks Mesilla was not settled yet. He never heard his father say that there was a town up above. When he made those first trips there was no one living at Alamitos. He knew Scott 15 or 18 years afterward. He made no trip on the east side in that 15 or 18 years. He does not know in what year he was born but he was baptized in a little Indian town below Juarez which they called Senecu'. He remembers when the American soldiers came to Paso del Norte and they came down at that town called El Real. There was a monte and when they came here they made their camp down there. The companies stayed there about twenty days. When they left the camp they came across the river and he does not know where they went. He does not remember a big battle this side of Chihuahua and he does not know that they called those soldiers Missourians and he did not hear that General Doniphan was in charge of them. He knew two generals, the name of one of the generals was the one he mentioned this morning, he does not remember it right now. The other general he remembers now was General Malone. Counsel then asks him in Question 360, "McKeen?" and he says McKeen was the other one. General Malone and General McKeen. At that time he was 9 or 10 years old. He is then asked if that was during the Mexican War, and he says that what he heard at the time was this, that these companies that were camped there had fought a battle at Temascalitos and were coming from

there to that camp. There at Temascalitos, the Americans and the Mexicans fought a battle, and he heard that the Americans had been victorious. Being asked if those soldiers made peace with the people of Paso del Norte, he says they did not do any injury to anybody, they stayed for a very short time. If the people of Paso del Norte came out to meet them with a white flag, he does not remember, but he thinks not because the Mexicans were running as fast as they could on the other side. They were friendly with the people of Paso del Norte during the time that they stayed there. There were about one or two hundred of the soldiers. A long time afterwards there was a fort on this side down below called Magoffin's, which was quite a long number of years afterwards. When he first knew this side of the river opposite Paso del Norte, Hart's mill was not already built and he does not know how long after that it was when Hart's mill was built. The mill was a water mill. There was not another mill opposite Hart's mill; there was another one away down below it and at the place called the Monte Tupido and the owner of the mill was Mr. Ponce. He was quite grown when he first knew the Piedras Paradas. In going through the Canoncitos as you left Canoncitos you could see the river going in this direction as it was not a long distance. As you left Canoncitos to come down to the river you could see the river not very far. The road comes down at Muleros at the place called Piedra de Amolar. The Canoncitos were on the sunset side of the river. He could not see the river from the Canoncitos because that is in the mountains and when they left the Canoncitos and came down towards the valley from there you could not see the water of the river running but only the high banks of the river. He saw the river running by Piedras Paradas many years after that, about 24 or 25 years back he first saw the river there. It is running there now. When he saw the river there he was going to Amoles

from El Paso and the river was not running by Amoles nor by Corral de Tapia, nor by Corral de Trosas. He does not remember the date when he went to show Mr. Van Patten the river but it was last year. He went with a man by the name of Agapito Marquez and he does not remember the names of the others, three of them were there. He started from White's house and they took him in an automobile where they could travel in an automobile and at other places he had to walk as far as he could and followed all the ancones and they took him in the automobile to some places until they got to Alamitos. He was one day showing the river. They slept that night at White's house and the next morning an automobile took them up. He does not remember what month it was but it was in the summer and the river was low. The crops had not been gathered yet. He got out of the automobile where it could not pass through as there were fences and ditches and they got off the automobile at so many places that he does not remember, having been asked to name the places. He is then asked if he at any places walked up or down the channel of the old river, and he answers "All along the old channel." He and two other men, the surveyor and the other two companions walked along the old river. The only one who was not walking was the man who was driving the automobile. He was able then to walk a little where they made him walk. Being asked who made him walk, he says that he had already promised Don Eugenio to come and show him the river and he did his very best to walk as much as he could. The others did not go as slow as he did himself and they waited for him. He then says that counsel had asked him how many witnesses were there and he forgot to mention the names of two from Ysleta. Colmenero was one of them and the other he does not know his name but he was an Indian. He went to show the river only one time. He showed the river at La Bruja ac-

cording to his knowledge. Opposite Salado's house he showed the river. The present river runs very far on the sunset side from there and it cannot be seen. He walked in a bed of the old river between Salado's house and New Canutillo and he did not see the present river between those two places. He walked between Alamitos and New Canutillo all the way. Between Alamitos and New Canutillo he could see the present river; and being then asked, at what place he could see the present river, he says, they could not see the river from there as the river was dry and they could not know where the river was running. He has seen the river dry before. He did not know the Arroyo de Artesa when he was young and he did not know the slough that came down by Salado's house. He saw several lagunas on the east side of the river where the river rose and filled those holes with water, but those were towards the hills and not towards the hosque. He knew only two bends in the river between Alamitos and White's Ranch in the early days. The first bend was where they called it Tres Alamos, this side of Alamitos, that was the largest bend and then it made a shorter bend which ended at Salado's house. Those are the only two large bends that he knew at that time. The largest bend at Tres Alamos was the one that went into the bosque. He does not know how far it went. At that big bend there were cottonwoods and where those bends were there were cottonwoods on the east side of the river. He never knew where they used to cut wood for the rafts to bring them down the river. When he first went up the river there were two jacales at Old Canutillo. He saw the peach tree at Duraznito and it was about that high (indicating about five feet). He does not know when it died. He did not see it after those three trips. Salado lived near that peach tree. He first heard the name of Tres Alamos on his second trip up the river. They slept with the sheep at that bend called Tres Alamos and his father said, these are

the Tres Alamos and the other men said so and for that reason he knew that it was the Tres Alamos, and he has known it by that name ever since. It was above La Bruja, not very far, one mile or less, perhaps less than a mile. La Bruja, when he first knew it, was a bosque. They slept sometimes during the night there and very early in the morning, at the edge of the bosque. Being asked if at La Bruja the trees came near the road he says, there was no road at the anconcs there, the road was up on the hills. Being asked how far was the road from the river at La Bruja he says that where the road made the bend where La Bruja was the largest distance that bend was might have been about two miles. (It seems probable that where he is reported to have said where the road made the bend, he meant where the river made the bend and he may have had in mind the bend shown on the map with the bill of complaint which started at La Bruja and came back to the hills a little below the Estero de las Sanguijuelas.) He did not know any lime kilns near La Bruja, nor anywhere along that old road. He is asked in Question 464 how far was the hill road from the river at Duraznito when he was a boy, and he says from the road to the river from two to three thousand yards, and between Duraznito and White's house in places the hill road was quite far from the river and at others it was not. For instance, when they used to find one of those lagoons near the hills they had to go a long distance in that direction (pointing eastward), and they had to make many turns on the road until they got to White's house and you could not state how many yards or what the distance could be because in some places you went in this direction on the road (pointing eastward), and in some places the other way and you could not state what the distance would be. The largest distance was at Chapo Reyes' house, you went up in that direction and up this way (pointing northeasterly), and you could not even see the river in that particular piece of road. The river at that place was a long distance

from the road but it was near to the monte. That was when he was making those three trips. At Chapo Reyes' house the river was almost next to the house. The road came down to that house from White's house and you had to go up the hill again. It was in that place that you had to give water to the horses and the animals. The river was running right there where the houses are now. He says he is going to show the distance, right there was the road, here is Chapo Reyes' house. They used to come to give water this way. They used to go in that direction, there they used to give water; where the houses are now, there the river was running. The road came to that place; when it left this place it went to catch the monte up above the hills, it went to catch the road in the monte on the hills. It was about a half a mile from the old road to Chapo Reyes' house. That big bend was below Chapo Reyes' house and it went out into the bosque. He is then asked if the bosque obstructed the view so that he could not see how far the river went, and he answers that at that point that he is asked about there was no bosque. There was one mesquite here and another there and some weeds which prevented him from seeing the river, because the river was away down in the monte and in parts you could not see the river from the road; where the bend was big enough and you had to go up to the hills you could not see the river. He did not know in the early days a place up there where there was salt. He does not remember now when he made his declaration about what he knew about the river but it was the same day that he rode in the automobile. Mr. Van Patten took his declaration and another man who was there as secretary. Don Eugenio administered the oath at Anthony. He thinks Mr. Baker was there. Mr. Reber went with him when he showed the river. He thinks at that time that he did not know Mr. Chaves who had nothing to do with showing the river or taking his statement. It may be that he knew Mr. Austin at that time, but he does not remember him.

On re-direct examination, before beginning the examination the Attorney General for New Mexico says, for the record, that this man's physical condition is such that he cannot examine him as fully as he desired in view of his begging to get away and go home. The witness says that he never heard of the battle of Valverde and did not travel on the west side of the river before the battle of Mesilla which was the battle when the soldiers came from Texas. He does not remember when James Magoffin first came to this place. The first time he knew him he lived at the Fort already and the witness was very young. There was Magoffin and another American who were both married to Mexican women, the other man was Mr. Lyons, who married Dona Carmen Valdez and Magoffin married Dona Dolores Valdez. They were sisters. When he knew Price Cooper at Ysleta he must have been about 30 years old. He went to La Mesa to live long after he knew Price Cooper at Ysleta. He knew Price Cooper at Ysleta before the battle of Mesilla. He knew Van Patten at Paso del Norte before the Civil War; a long time before the war. He knew Cumplido at New Canutillo, after the town was built and he believes the town was built before the railroad came. Before the railroad was built there were some ranches there, cattle ranches. It was called Canutillo, not New Canutillo. The first people who had ranches there were the Terrasas and the Cumplidos. There were no other houses there then. Right in the very place where they were is New Canutillo now. Coming from New Canutillo down the river you would come first to the place where Salado lived before Duraznito and also the place where Chapo Reyes lived before Duraznito. He says his father's name was Borjas Garcia and his mother was Florentina Lucero. From the peach tree at Duraznito to the river, when he first knew the place it was less than half a mile. A half a mile is 150 yards.

We next come to the testimony of

JOSE GARCIA

which begins on page 1478 of the record.

He lives at Anthony and has lived there about three years and before that he had his property across the river opposite Anthony, where he lived over 25 years in the Refugio Grant. He went there before the railroad was built and he lived in the old town of Amoles which was destroyed by the river. He was born at Paso del Norte where he lived until he was over 20 years old, and then went to Dona Ana for about four years. After the town was destroyed by the river he went back to Dona Ana and stayed there over one year and then went back to Amoles. The people moved from there to where they are living now at a place called Las Cuevas, but he knows a place called La Union and some of the people of Amoles went to La Union to live. Before he went to Dona Ana to live he had been up the river from Paso del Norte to Las Cruces or Mesilla or Dona Ana. He was about 20 years old when he first went up the river and was about 20 years old when he went to Dona Ana to live, but he had been up the river about a year before, and went to Dona Ana. He traveled on this side of the river. He remembers when the flag was raised at Mesilla. At that time he was living at Amoles, but he does not remember how many years he had been living at Amoles when the flag was raised, but he had been living there for some time. He does not know how old he is. He remembers about the war between the United States and Mexico. At that time he was living at Paso del Norte. He heard that they fought at Temascalitos and he saw all the companies that passed here, they were camped right where the Santa Fe depot is now on the other side of the river. It was in the winter time. He had not been up to Dona Ana before those soldiers came. He does not remember how long

after that it was that he went up the river for the first time, but he remembers that he was about 22 years old when he went to Dona Ana. He remembers when Mesilla was first settled and he was here at Juarez at that time and had not gone to Dona Ana before that. After he went to live at Dona Ana he made journeys down to Paso del Norte and back, but does not remember how many times. He came to the fiestas at Paso del Norte in December and sometimes he came to the feast of San Lorenzo. During the years that he lived at Dona Ana he came down to Paso del Norte and went back about five times and traveled on this side where the sun rises. He has traveled on the west side. His father used to take him to the bosques on that side when he was about seven years old. They went there for wood. They went to the rincon called Frijol which is opposite New Canutillo. He went three times with his father to cut wood and he was about nine years old at the time of the last trip. They brought the wood down to Paso del Norte by the river in rafts. Other people went along. They had to get 30 or 40 men together on account of the Indians. After he lived at Amoles he traveled up and down the river on the west side. His father's name was Jacinto Garcia and his mother Maria Ynes Enriquez. Simon Enriquez was the brother of his mother and Simon lived at Amoles. There were a great many living at Amoles when he first went there and he gives the names of Secundino Elias, Alejandro Ramirez, Sixto Yrigoyen, Doctor Ramirez, Jose Marquez, Antonio Lovato, Longino Moundo, Simon Enriquez. He does not remember other names. In traveling up and down the river after he went to Dona Ana to live he became acquainted with the road and the river in different places and with the place called Alamitos which was bosque. The bosque was on the other side of the river. On the east side there were a few scattered cottonwoods but there was tornillo there. Alamitos is above Anthony, not very far. He

has been there within the last year. There are now a few cottonwood trees there, one or more. Everybody can see the bed of the river at that place. The trees are right where the bed of the river is. The river is not there now; he does not remember when the river ceased to run at that place. When he first knew the river from Alamitos downward it ran straight. He knew a place called Tres Alamos which is below Alamitos. The river ran straight all the way to Tres Alamos near the hills. The road which he traveled in those early years went on the hills. Below Tres Alamos the river ran leaning towards the hills. Within the last year he has seen the place called Tres Alamos and the trees are almost adjacent to the railroad; the railroad is towards the hills and the trees are towards the river. He does not remember exactly how many trees are there now but he thinks there are two. He knew a place in the early years that they called Alto de la Bruja which was below Tres Alamos. Below those places the river ran straight near the hills and near where the railroad now is. He knows a place now called Vinton where there are large brick kilns and there is a bridge near Vinton, above Vinton. When he first became acquainted with the river, it ran right where that bridge is now and the new river is right there. That bridge may be two thousand yards above Vinton, but he does not know. It is a little far. At that place now called Vinton, the road which he traveled in the early years ran on the hills. In those early years he usually traveled with carts and wagons. He did not know the Estero Redondo de las Sanguijuelas, but he did know the rincon called by that name. The road which he traveled was far from that rincon, on top of the hills, and the rincon was far from the river. He could not see the river. He knows a place now called New Canutillo. When he knew that place first nobody lived there, he does not remember when anybody came there to live. Juan Jose Cumplido was the first person

who lived there before the railroad was built, long before. He has seen the bridge at that place and when he first became acquainted with the river it ran, with reference to that bridge, a little towards the bosque, but he does not know how far it was from where that bridge now is, but it was farther to the west. He knew a place called Canutillo. When he first knew that place there was a house there and Salado lived in the house. Between New Canutillo and the place where Salado lived, when he first knew the river, it ran near on this side. He did not know the beaver dam in the river. Between the two places called Canutillo the road ran on the hills. Between those two places the river did not run very near where the railroad now is. The river ran close to the house in which Salado lived and the house was near to the hills and the road opposite that place was on the top of the hills. There was a road to come down from the hills to where Salado lived, it left the main road in front of the house to come down to get water and then he would go back to the main road over the same road that he came down. He knew a place called the Uranguena bend which was below La Bruja and when he knew it, it was not large. He has not seen any bend in the present river near where the Uranguena bend was or he does not know. He was at that part of the river within the last year and came by the place called Vinton and by La Bruja, and when he was at Vinton he saw the present river. There is no bend in the river or he has not seen any bend from La Bruja down. There is a bend from La Bruja down. There is a bend from Vinton down in the present river. There was no bend there when he first knew the river. He became acquainted with the place called Duraznito in those early days. Duraznito was a peach tree. The tree was near to the river when he first knew it and it was large. There was a ford crossing the river at Duraznito which went to a bosque for wood. Between the place where Salado lived

and Duraznito the river was running close to the hills, and between those places the road was on the hills. He knew Chapo Reyes who lived in the bosque there below Duraznito. His daughter Angela lives there now. He lived inside of the bosque on this side of the river and was living there when the witness first traveled up and down the river. The river at that time was rather far from where Reyes' house was. The witness stopped at Reyes' house, but never went from his house over to the river. You could not see the river from his house. He has seen the place where Reyes' daughter lives within the last year and it is near the railroad. The main road which he formerly traveled opposite that place was on top of the hills. He does not remember within the last year seeing a place where there were some small brick houses and a ruined brick kiln. He knows the place which is called White's Ranch. When he first traveled up and down the river there was not anybody there. He remembers when a house was built there by Mr. White, the owner of the place. He knew White. When he first knew the river it was far from the place of White's Ranch, it was on a height and the old road went near the house on the side of the hills. When he went to live at Amoles the river ran very far from the hill on which White's Ranch was built. From Duraznito down to White's Ranch the river ran near the hills. The river left the hills to go away from a place called La Polvora, where it formed a bend and went the other way. La Polvora was above White's Ranch, a little far. He remembers about an old lime kiln above White's Ranch and La Polvora was a little far above the lime kiln. The bend came back towards White's house. At the lower end of the bend he does not know how far the river was from White's house. He did see the river running close to the foot of the little hill on which White's Ranch was, but he does not know how many years it is, but he saw it there. He knows the Piedras de Amolar and

the river ran right close to the rocks which are on this side of the river. Between White's Ranch and the Piedras de Amolar the river ran towards the other side. The river struck the Piedras de Amolar. Between White's Ranch and the Piedras de Amolar the river ran not far to the other side. It went through the middle of the ancon not far away. There were some large esteros there and he is trying to think of the name of the ancon, but he does not remember it. He was then asked if the ancon was called the Ancon de Borrego or was it called Muleros, and he says, it was called Muleros. The road ran up on the hills because when the river was high there was no room for the road below. There was only one road on the east side of the river. When the river was low the road went down into the low ground at the edge of the hills. When the river was low if it rained much they always went on the hills, but when it did not rain much it went below. From White's Ranch to Alamitos they could travel on the low ground when it did not rain, in parts. When he went to Amoles to live the river was far from Amoles to the east and he could not see the river from Amoles. When he went there to live there was bosque which prevented seeing it. He knew Jose Maria Garcia who lived at Amoles or inside of the bosque, at what was called the island. He was well acquainted with the island and the principal channel of the river was on the east side of the island. There was no water on the west side of the island. He does not know why it was called an island. On the east side there was an estero but there was none on the west side. Where Garcia lived on that island was far from the old town of Amoles below. He traveled up and down the river on the west side before Amoles was destroyed and he came to Paso del Norte by the road through the Canoncitos and became acquainted with the Piedras Paradas near which the road passed, sometimes to the right and sometimes to the left. In those early years the river ran

far from the Piedras Paradas and you could not see the river from the Piedras Paradas on account of the bosque. He became acquainted with Corral de Tapia and the river passed far from Corral de Tapia and it could not be seen from the Corral de Tapia on account of the bosque. He knew a place called the Alamo Naranjo and in those early years the river passed far from the Alamo Naranjo and you could not see it at that place on account of the bosque. He knew the Alto de los Cuarones and the Corral de Trosas. The alto was so called because two brothers by the name of Cuaron were killed there. He does not remember when they were killed, but it was before he went up the river from Paso del Norte. When he first became acquainted with those places he could not see the river from that Alto or from Corral de Trosas and it was far from those places. You could not see the river from those places because in part there was bosque and at other places there was not, but you could not see it because it was very far. He knew the Arroyo de Artesa which is below Sanguijuelas on the other side of the river. It was a long arroyo. He does not know where it came from. It was a large arroyo but he never saw water running in it. He was living at Amoles when the river came in and destroyed the town. The houses were thrown down. There were no people injured or drowned. When he first knew Mesilla the river was between Mesilla and Las Cruces on the east side of Mesilla. The river is on the other side of Mesilla now. He does not remember when the river changed from the east to the west side of Mesilla, but he remembers that it changed. The river changed before the town of Amoles was destroyed, but he does not know how long before. After Amoles was destroyed by the river he never saw the river running near Alamitos or between Alamitos and Tres Alamos. After the town of Amoles was destroyed the river did not continue to run near La Bruja. After Amoles was destroyed the

river ran near the Corral de Trosas but far from the Corral de Tapia and it passed far from the Piedras Paradas. He was living at Amoles at the time the flag was raised at Mesilla, but he does not remember how long he had lived there. In the early years he became acquainted with La Cobrena and the river passed far from it. The road on the west side of the river which came through the Canoncitos after it came to the valley going to Amoles went through the bosque all the way. When he first knew that country there was the most bosque on the west side of the river and there was very little on the east side between White's Ranch and Alamitos, but there was much tornillo.

On cross-examination this witness testified that he was baptized at Paso del Norte and his god-parents were Jose Ventura Lopez and Maria Antonia de Lopez, but he does not know who was the priest who baptized him, nor has he a certificate of baptism. His religion is Catholic. He knew the boys of Simon Enriquez, Jesus, Jose, and Pancho Enriquez. Jesus and Jose are living and Pancho is dead. The witness is older than Jose and Jesus, he is about 16 years older than Jesus. (Jesus testifies at page 1738 of the record that he was born in 1844.) Jose Enriquez is younger than Jesus, but the witness does not know how much younger. The witness is not related to Jose Maria Garcia, but he knew him and his family. He knew Juan de Dios Sais here at El Paso. He had a ranch at the place called El Naranjo but the witness does not know when he did. He remembers when the Texans came, when the North fought the South. He does not know who the commanding officer was. He never heard the name of John Baylor, nor the name of Sibley, nor the name of Canby, nor Major Lynd; and at the time of the Mexican war he did not hear the name of Doniphan. He remembers very well when the Missourians came to Paso del Norte, but he

does not know in what year they came. The Texans did not camp where the Santa Fe depot now is. The soldiers who fought the Mexicans were the ones who camped there on the other side of the river. Those soldiers went to Chihuahua and they fought at Sacramento. He was 14 or 15 years old when he heard that. (The fight at Sacramento was in the winter of 1846 and 1847.) When the soldiers were camped at the Santa Fe depot he went to the camp to sell eggs. He does not remember how many soldiers there were. At that time there was not a fort on this side called Magoffin's Fort. He remembers when that fort was first started and he was then already a grown man. He knew James Magoffin for whom the fort was named and he knew his son Jose. He has known Jose since his father moved to the fort. When he first knew Jose he thinks he was over 30 years of age and he himself was about 27 years of age. Jose Magoffin was not here about the time of the Mexican war and this witness does not know when he came. In those days he knew Price Cooper who was working for a man by the name of Smith with wagons, but he does not know when Price Cooper cut wood up towards Canutillo and never saw Price Cooper up in that country. He used to see Jose Magoffin when he went to Canutillo. He had some land at Canutillo where he cut the wood and sold it. He does not know if Price Cooper helped him cut the wood as he never saw Cooper in that part of the country at all. He does not know any one who cut wood for Jose or James Magoffin. He does not know if James Magoffin made a ditch near Old Canutillo. He heard that the government had built the ditch. He himself worked on that ditch and he was already a full grown man. He does not know how long the ditch was but the mouth of the ditch was at a certain rincon, the name of which he does not remember, where the mouth of the ditch took the water. He does not know where the lands were which that ditch

was to water. There were no cleared lands. The ditch that he worked on was about ten feet wide. He does not know if it was as much as three miles long. The mouth of that ditch where it was taken from the river was above Old Canutillo, quite a long distance. When that ditch was dug there were no cleared lands they were going to irrigate at Canutillo Viejo. There were some esteros and above those esteros there were tules, lands covered with cat-tails. After they built the ditch he did not see them watering the farm with it. He did not go there where he dug the ditch to see if they had put in a farm. He does not know whether they farmed or not. While he worked in the ditch himself he does not know anything about the surveyors, whether they came here or not. He did not hear that some surveyors came to survey the river and he never saw surveyors from Mexico and the United States surveying the river. He worked two weeks and a half in digging that ditch and he passed White's Ranch often during that time. There were no soldiers and surveyors camped at White's Ranch at that time when he was digging that ditch. He did not see soldiers camped there at White's Ranch, nor any surveyors surveying the river from Alamitos to White's Ranch. He has never seen a monument on the hill west of Dona Ana on the other side of the river. He did hear of a Mexican official by the name of Salazar but he does not know what Salazar was doing here. He heard his name mentioned when he was a boy. He did not hear of General Conde. He knew Simeon Hart where he had his mill and his house was near the mill. He knew two of Hart's boys but he did not know their names. He knows Juan Hart who was born here and he knew his mother whose name he does not remember but she was the daughter of a man from Santa Cruz in Chihuahua and she was a Mexican woman and her father was Don Leonardo Siguieros. He knew the Harts when they were very young and they were attending school. He does not re-

member exactly where the school was, but they used to come in a carriage to school and also went across the river on pleasure trips in a carriage. The witness was already a grown man when he remembers Juan Hart going to school, and Juan was about ten years old. The witness does not know what his age is. He has tried to get his baptismal certificate, but has not been able to get it from the other side because they did not find it. He does not know whether he is an Indian or Spanish. The Indians were his neighbors when he was a boy but he never belonged with them. When he went to live at Dona Ana he was 26 or 27 years of age as he knows because he got married when he was 21 and six years after his marriage he went to Dona Ana. He does not know if there is a record of his marriage or not, but his father told him that he was 21 years old when he married. Prior to his marriage he had not been up the river. After his marriage it was six years before he went up the river when he went with his wife to Dona Ana, so that before he married the only trips that he had made were on the west side with his father to haul wood, to bring wood. When he brought wood he came with his father on the rafts. When he was rafting wood he remembers a whirlpool near the rocks of Piedras Paradas. They went up to a point opposite Canutillo to find wood because there there was quite a lot of dry wood and they wanted dry wood and not the green wood. On the west side of the river there was wood and on the east side there was no bosque. When he says "bosque" he means cottonwood trees. They call bosques where there are alamos. Being told by counsel that he said this morning there was a large district of brush and other wood besides cottonwood on the east side, he answers, that he does not know if he said that. Tornillo grew in the valley. There was tornillo on the east side and the tornillos grew very high. They grew on the lower land. Tornillo trees are a sign of good land. He did not know an old river-bed which

ran down on the sunrise side of the hills this side of old Canutillo, he never saw it. He knew an estero called the Estero Frijol which was on the other side of the river. The one he knew was not very long when he knew it. He does not know if it was an old river-bed. He first saw the Estero of Frijol when he was a grown man. When the battle of Valverde was fought he was living at Amoles. He does not know how long he had been married when that battle was fought and he does not know how old he was at that time. After the battle of Valverde a few of the Texans came this way and he thinks they went back to Texas and he does not know where the others went. He remembers after the battle of Mesilla that the northern soldiers marched towards the Pass of San Agustin, but he does not know what happened to them there, nor that they were captured. He was living at Amoles when the battle of Mesilla was fought. He does not know whether the battle of Mesilla or Valverde was the first one, nor how much time passed between them. He does not know if the same Texans fought in both battles. He did not see one of those armies pass up on the west side of the river by Amoles and did not hear of their passing on the west side of the river. When he first knew the road on the west side sometimes it went over the height of Cuarones, because it was the road traveled by those who were going after mesquite roots, wood and canaigre. There was only one road on the west side of the river and that other road was for the purpose he has just stated. They used canaigre to tan hides. The river ran by Amoles some years after the battle of Valverde. (It is to be noted that the witnesses speak of Amoles not merely as a place where the old town was but a section of country, and they speak of the new town of La Union as being Amoles, although it is far from the old town that was destroyed, and one witness at least speaks of a place called Las Cuevas as being Amoles). He knew a bend in the river called Cobrena which was at

the Cobrena. He knew the river there when he was living at Amoles, but the water destroyed all their houses and that was the first time he saw the river at the bend of Cobrena. He had a house destroyed by the flood at Amoles and he built back at the same place. He remembers the old church which was a chapel and was destroyed by the flood. It fronted to the east. The only man that had a large house there was Don Simon, above the church. At this point in question 491 counsel tries to induce witness to say that before the flood destroyed Amoles the river was in front and in sight of the church, and he answers that it ran where the chapel was; and in the next question counsel asks him if the river did not run in front of the church before the flood destroyed Amoles, and he answers "No, sir"; and that he is tired and that his head hurts him and the interpreter adds that the witness would like to rest a little while. Thereupon an adjournment was taken until the next Monday morning, when the cross-examination of Jose Garcia was continued, and he testifies that Temascalitos was above Alamitos and far from Las Cruces downward and that Brazito was at the end of the Crucitas Llano. He does not know how many miles apart were Temascalitos and Brazito, but says it is quite far. Temascalitos is below Brazito and when he was young he knew the place called Brazito and also Temascalitos. Temascalitos was far from the river and Brazito was quite far from the river. He knew the fort at Brazito. He does not remember when he first knew that fort, but he had been on that road already before it was built. At Brazito he saw the river run in only one channel. He did not know any island at either Brazito or Temascalitos. There was no timber on the east of the channel of the river at Brazito. He knew the island of Jose Maria Garcia long, long ago when his father took him up the river to bring wood. The river channel was quite far from the island at that time. An estero made the island, an estero on one side and it was next

to the island and was quite wide. It was wider than the river-bed. At that time there was no estero on the sunset side of the island. He knew the Estero Frijol which was at the rincon of the Frijol. The river ran this way and that estero was towards where the sun sets and very far from the old town of Amoles and below Amoles. There were some lomas de arena near it. That estero was on the side of the island of Jose Maria Garcia where the sun rises. The Arroyo de Artesa did not join that estero. He does not know how long that estero was. When he was a boy it did not have any water. It may be it has had water, but when he knew it, it had no water. When he first saw it, it was before he was married. When he first saw the old town of Amoles it was before he was married and also when he first saw the Island of Jose Maria Garcia and the Corral de Trosas and the Corral de Tapia. He was about 7 years old when he first saw the old town of Amoles. When he first saw the place called Alamitos he must have been over 15 years old. When he first saw Anthony he was going to Dona Ana. There were several large trees at Alamitos when he first stopped there. He does not know how many, he did not count them. There was no house there when he first went along there. Many years afterwards he saw a house there and he was then a grown man and was married. He does not know who built that house, but the man who lived there was Scott and he had cattle. He remembers when the stages were first running by that place, and he was then a little over 26 years old. He knows when an irrigation ditch was dug near Alamitos, but he does not know what year; it was after the Texans came, but he does not know how long after. They said that the government built the ditch. Scott was living there when it was built. He does not know how long Scott lived there. He was not there when they ran the first stage coaches. When the stage coaches first began to run there was no one there. It did not become a stage stand as soon as the stages began to

run. The stage stand was near to Temascalitos. He did not say he knew the beaver dam and never heard of it. He did not know of a beaver dam north of Alamitos. Before the Texans came he was already living at Dona Ana. He lived there four years and after that he left the place. He thinks it was in August that he went to show the river between Alamitos and White's Ranch last year. It is over a year since; he does not remember if it was in August, but it was during the summer. It was August of last year. He went with Mr. Van Patten, Vicente Garcia, Jose Enriquez, Catarino Martinez, Florencio Lucero, Juan de Dios Sais, and that was all. Being asked what Americans were with him, he says the gentleman who has an office here, a fat man. He was the only American. Antonio Lucero was not long, nor Jesus Albillar, nor Mr. Reber. He does not know Steen or Post and did not see them there. When they dug that ditch from Alamitos this way, he does not know where they dug it, but he remembers that ditch was built by Scott to irrigate that ancon where he lived. The ancon is in front of the town of Anthony on the sunset side. He began to show the river from Alamitos down and does not remember how many days he was engaged in showing the river. The first night they camped below Tres Alamos, the second night at New Canutillo, the third night at the brick kiln, the rincon of Chapo Reyes, and the following night they slept at White's house, which made four nights. Being asked where they camped the next night, he says then they left. During that time they went on the west side of the river. After they had already been on this side they went across to the other side, about 15 or 20 days afterwards. They went as far as Corral de Tapia, but not above Corral de Tapia. They went by the way of Canutillo and did not go to Old Amoles during that trip. When they went from New Canutillo across the river they went back on the same road that they came down. On the trip 20 days afterward there went with

him the surveyor, Mr. Eugenio Van Patten, and he does not remember the others. There was only himself as a witness. He went on the west side because they wanted him to see whether he remembered Corral de Tapia and he found the ruins where the corral used to be. The corrals were built of adobe. When he was a boy the corral was already in ruins. Juan Sais in the early days lived here at Juarez and he lived at the Alamo de Naranjo and at a ranch there he had cows. He lived by himself. There were Indians in the country at that time, but he was lucky enough that they did not come where he lived. They did not take his cattle. He got water from the river which was somewhat far from his place. He knew the ranch of Luis Barrio which was at the Rincon de Naranjo, towards the hills. He was taking care of his cattle, but the witness does not know who lived with him. The witness was already a grown man when Barrio moved there and also when Juan Sais moved there, and he thinks he was as much as 30 years old, and about 30 years when Chapo Reyes moved to his place. Reyes moved there before the Texans came. The peach tree at Duraznito was growing there when he first saw that place and it was already grown. He never saw any fruit on the tree, it was quite far, a little far from the river channel. When he first knew Old Canutillo there was one house there. He did not know the grant called the Canutillo Grant. In that house at Old Canutillo there lived a man called El Salado and when the witness passed there he was living by himself, but the witness does not know what he was doing. Salado was an Indian and was a Pueblo Indian. Salado was white complected and was of regular size, a lean man. When he first knew the place where Canutillo now is there was nothing there. There were houses there many years afterward. There were houses there before the railroad was built. Before the railroad was built Juan Jose Cumplido and Jose Terrazas lived there. Cumplido had cattle. He was a Mex-

ican. He lived with his family. When he, the witness, started to show the river at Alamitos he walked on foot and when they left the bed of the old river they got on the wagon sometimes. They left the bed of the old river first a little before they arrived at Vinton. They had been walking on the railroad track, but he does not know what the distance is. They all walked on the railroad track and below Vinton they did not walk on the railroad track, but on the river, where the new river is running now, on the edge of the river. They did not walk to Sanguijuelas and did not go to the estero. They got on the wagon at New Canutillo. The Estero of Sanguijuelas is above New Canutillo. They did not pass by that estero in going to New Canutillo. From New Canutillo down to Durazmito they traveled along the rincon in the center of the river, where the river runs now. Opposite Old Canutillo the old wagon road when he first knew it went over the hills. The road came down from the hills to Salado's house. It was somewhat far to the road that went on the hills which did not come down. He knows where Montoya switch is, but he does not know how far the present river is from that place. You cannot see the river from Montoya switch. He knows a bridge over the river above Montoya. In showing the river to Mr. Van Patten they went through fields above Old Canutillo. There were no fields below Old Canutillo. There is a field just below the bridge which is near to Montoya and he walked through that field showing the river. The houses are on this side (pointing eastward) and they passed to this side (pointing westward), they passed almost near to the houses. Van Patten was with him all the time and he does not know if Van Patten knew about the old river, but they showed him the river. They all went there to show him the river. They were all walking together and Van Patten was behind. Mr. Austin was going along on one side of them on foot. Being asked when he made his declaration about what he knew concerning the old river, he says

he is making it now and this is the first time. He came to El Paso last Thursday in the evening. He is not related to the Indian woman whom Mr. Van Patten married.

On re-direct examination he says that Joseph Magoffin did not cut any wood up the river. Cumplido was the man who cut the wood, but he does not know that he cut the wood for Magoffin. At the time that Cumplido was cutting that wood Joseph Magoffin was here in town and it was after the soldiers came from Texas. He remembers about some men from Texas brought through here prisoners when he was about 8 years old. He saw them. There were four carts full of them. They went to Chihuahua. They were the ordinary carts and when he traveled up and down the river something about 12 people could get in one cart. He did not work on the digging of a ditch for Magoffin, but for the government, and they were paid for that work at the store of Solomon Schutz. That ditch was at a place called Rincon de la Parida, above Vinton. Vinton was below Tres Alamos. They brought the ditch all the way down to near White's house. He saw the acequia in use afterward and they irrigated land where the brick kiln is now, where the Chapo Reyes Ranch used to be, which is above White's Ranch. The ditch was not taken to White's Ranch, but to the rincon which is above White's Ranch. He was over 30 years old when he worked on that ditch. He was employed by a mayordomo or commissioner called Crier. He was an American. The witness knew him when he was a soldier, it was at the time when Scott was here also as a soldier. It was after the time the Texas soldiers came here and went to Mesilla, sometime after. He saw a whirlpool near the Piedras Paradas at the time the river changed there, after the river changed there. In the first years when he was still young there was no whirlpool at the Piedras Paradas and no river was running

there then. After the old town of Amoles was destroyed he built his new house where the pueblo is now, at the place called La Union. After the old town was destroyed no one rebuilt houses right where the old town had been. The only name he heard for the fort at Brazito was Brazito and he never heard of Fort Fillmore. When he was young he did not know Dionicio Parra, nor a man named Antonio Garcia. When he first knew the place, the main channel of the river was far from the Island of Jose Maria Garcia and he was well acquainted with the whole of the island. The water was not all around the island, but they called it the island. He knew the estero called Frijol and he knew an arroyo called the Arroyo de los Defuntos, which was above the Artesa and far from the place called Frijol. He knew the Arroyo de Artesa. Other arroyos did not run into that arroyo which was in front of Sanguijuelas, on the other side of the river from Sanguijuelas. That arroyo did not run into the river. It was there only, it was an arroyo that the river had left there formerly. He never saw any water in it. When he was living at Dona Ana the stage coaches did not run to Dona Ana, they crossed at Picacho and from there they went towards California. When he was young he knew the town called Santo Tomas which was towards the side of the setting sun when the river ran between Las Cruces and Mesilla. The Fort of Brazito was towards the side of the rising sun from the river and the fort was near Santo Tomas. The river destroyed the town of Santo Tomas, but he does not know whether it has been rebuilt or not, he has not been there. The river destroyed that town when it changed to the other side of Mesilla. He does not know whether the river destroyed other places at that time. He knew a place called Bosque Seco which was not very far from nor near to the Fort at Brazito. Bosque Seco was on the east side of the river and the river was far from Bosque Seco. Doroteo Salado was a thin, lean man when he first knew him and he did

not get stout and did not become a fat man. He knows Mr. Amado Chaves with whom he first became acquainted within the year past. The witness saw him at Anthony, but he does not remember when. Don Eugenio Van Patten was there also, but he does not remember if there was anybody else. He knows Mr. Reber who was there also, but the witness does not know what he was doing. He does not remember that any of them asked him any questions at that time. When he first became acquainted with the river it ran within about 100 yards of the place where White's Ranch was afterward built. After the house was built the river ran about 100 yards from it. When he first went up the river, Mesilla was not settled; when Mesilla was settled he lived at Paso del Norte.

On re-cross examination, he again says that he was 7 or 8 years old when the four cart loads of prisoners were taken to Chihuahua. It may be there were more, those four were the only ones that he saw himself. He went to Dona Ana first when he was 20 years old and lived there four years, and during that time the stage coaches crossed the river at Picacho, they were crossing at Picacho when he first went to Dona Ana. He knew Ben Dowell when he was very young and was very young when he knew him. Dowell had his house here where El Paso street is now. He knew of Dowell's having property above White's house and it was below that brick kiln which was built lately. It was far from Chapo Reyes' place, but on the same side of the river. People said that Dowell owned property there, but the witness never saw him there and never saw him planting anything there, he did not see his farm. He never heard that he had any farm there. He heard it said that he had a ranch and had cattle. He had children who sometimes went there. Juan Dowell was one and he remembers only Juan Dowell and Mary Dowell. The names of the others he does not remember. He has heard that the

only children of Dowell who are living are Juan and Mary and he has been told that Mary lived somewhere where they call it Chihuahuita. Juan lives below Stanton Street in this town, but he does not know the name of the house. After he went to live at Amoles the river ran near where Vinton now is, but he does not know how long it ran there. When he first knew the river from where White's Ranch was afterwards built down to the Piedra de Amolar, the river ran near the side of where White's Ranch was.

The next testimony in the record is that of Thomas R. Owen, a surveyor, and while it has some bearing upon the location of the river, when taken in connection with the Clark Survey, yet it is not of the same character as the testimony of the old men which we have been considering and it can more appropriately be considered further along in this brief.

We next come to the testimony of

TRINIDAD BENAVIDES

which begins on page 1544 of the record.

This witness says he lives in Las Cruces, has lived there for 15 years and before that he lived in Dona Ana, and he was born at Juarez, Chamisal, and was taken from here to Dona Ana by his uncle when he was about 8 years old. His uncle was Juan Jose Benavides. They remained in Dona Ana. His uncle had business there and here also and they went up and down the road frequently. His father was Ricardo Benavides and his mother was Hilaria Blanca. He went with his uncle to Dona Ana because his father died and his uncle took all the family, his mother and all the family. He lived at Dona Ana until he came to Las Cruces 15 years ago. He was not at Mesilla when the flag was raised there, but he remembers that his uncle and other old men told him

that the flag was raised, but he did not see it himself. He was then in Dona Ana, but he does not remember in what year they raised the flag as he does not know how to read and does not remember the date. He does not remember in what year he was born, although his mother used to tell him, but he does not remember. He is not positive, but he thinks he was about 12 years old when he heard that the flag had been raised at Mesilla. Prior to that time and after he went up to Dona Ana, he had been up and down the river on the east side, but not a single time on the west side. He became acquainted with the place called Alamitos and with White's Ranch. Between those places the river was near the hills. There was one road between Alamitos and White's Ranch, but at certain times there were cut-offs, but only one road and the cut-offs were only to avoid hard places; where they could see some sand they would cut off from the main road to avoid it and come back again. The road went on the hills all the time and they did not go into the valley. Alamitos was a stopping place where travelers stopped to give water to the stock. The road came right to Alamitos and the river was right there adjacent to the edge of the prairie. He does not know why the place was called Alamitos, but thinks it got that name because there were some cottonwood trees there, a few only, at the edge of the river. The river was right there and the big bosque was on the other side. When he first knew that place there was no one living there. Some years afterwards a man named Scott lived there in charge of the stage mail station. He does not remember when Scott's house was built. When he first saw Scott there he thinks he was about 15 years old. This side of Alamitos the river ran for a little distance straight, then it made a bend to the west, not large, and then came towards the east, almost straight to the east and came to the edge of the monte at the hills, straight to Tres Ala-

mos. He is acquainted with the place now called Anthony, and Alamitos is north of Anthony and quite near. From Tres Alamos the river ran straight and the railroad is right on top of the place where the river ran at that time. Below Tres Alamos the river ran straight more or less about a mile, but he does not remember exactly. He became acquainted with the Alto de la Bruja which was below Tres Alamos. Between Tres Alamos and La Bruja the river traveled straight for some distance and then formed a bend towards the west a little above La Bruja, it was not a very large bend. Below La Bruja the river formed a bend towards the west and then turned to the east again and came back very near the edge of the hills. He knew the Estero Redondo de las Sanguijuelas when he was a boy. It was at the edge of the monte and was a bend that probably the river had left there at former times. The river was adjacent to the estero, its bank was close to it. That estero was not very far from the bend below La Bruja. He does not remember the Arroyo de Artesa. He knows the place now called New Canutillo and he remembers that place as it existed when he was a boy. No one lived there then. Many years afterwards settlers commenced to go there. He is not positive whether there were any settlers there before the railroad was built or not. He does not remember. He has recently visited that place and seen the bridge near it. When he first knew the river it was so near that it started right from there and came down to Old Canutillo. It ran very near to where the railroad now is at New Canutillo. No one lived at Old Canutillo when he first knew that place. Afterwards Doroteo Salado lived there and he had a little house very near the river, a little more or less, it might be a little longer than this room to the bank of the river. The road which he traveled came very near to the house of Salado. The road was on top of the hill and the house was towards

the edge, towards the playa. The house was very near the hills. He does not remember whether he ever stopped at Salado's house. There was a road coming down from the hills, an entrance to the house. He did not know the beaver dam, but he heard that there were beavers around there somewhere. Between New and Old Canutillo the river was not far from the hills. He became acquainted, when he was a boy, with a place called Duraznito and it was not very far from Duraznito to Salado's house. Duraznito was a stopping place. People would stop away and come to the river to get water. He does not know why it was called Duraznito and did not see any peach tree in that vicinity, but he understands that was the reason they called it that way. At Duraznito the river was not very far from the hills on the east side. The river there had sufficient width, it was not narrow, it was regularly wide, but it was narrower than at other places. He did not know Chapo Reyes and heard his name only. He lived below Duraznito, so the witness was told, but he does not know just where it was that they said he lived. When he recently visited that part of the country he remembers seeing some little brick houses and the old ruined brick kiln below Duraznito. At that place, when he knew it as a boy, the river passed near the road and the river passed adjacent to where the houses are and possibly right where the houses are. He thinks it passed right where the houses are. Between Duraznito and that place where the brick houses are the river was coming straight toward White's house and ran near the hills and from the place where the brick houses now are the river ran straight to White's house not very far from the hills. When he was a boy he was acquainted with the Piedras de Amolar which are below White's Ranch and are near the beginning of the canon. The water used to strike there. Between White's Ranch and the Piedras de Amolar the river ran straight and went close to the hills. White's Ranch was on top of a

bluff and about 6 or 8 feet above the river, that was the bank. He does not think that the house was 100 varas from the edge of that little hill, and then he adds, a good deal less, it was very near to the bank, a little longer distance than the length of this room. The foot of that little hill was the bank. The hill was the bank itself. The bank always remained in the same place and the river did not destroy it, did not cut it away. He does not remember whether there was any house at White's Ranch the first time he saw that place. He supposes Mr. White lived in the house. After the house was built there was some family there, but the witness does not know whether it was White's own family. He does not know how long any one lived at that house. They used to pass there from time to time when they were living above and there were always people in that house, every time they passed by. There is no house there now, the ruin is there. He does not remember when the house fell into ruins. At Alamitos the river is not now running where he knew it when he was a boy. There is an old bed of those years which has not become obliterated yet. The river does not now run at the same place near where Salado lived or near White's Ranch as when he first knew it. He does not remember when the river ceased to run at those places. When he was a boy he did go to Mesilla and Mesilla was on the west side of the river. Mesilla is now on the east side and the river goes on the west side. He does not remember when the river changed at Mesilla, but he was already a grown man. The river changed to where it is now on the west side. It was on account of an old ditch which was called the Acequia Brava. The river ran into the ditch and there was a large flood. The people who settled Mesilla made that acequia. He does not know much about dates, but he thinks it was in '61 that the Texans came to Mesilla. He does not remember how long they stayed there. They were traveling towards the north. He

thinks the river changed before the soldiers from Texas came, but he is not very positive. After the river changed to the west side of Mesilla he traveled by Alamitos and Canutillo and White's Ranch, but he does not remember whether he saw the water running at those places. Before the change of the river at Mesilla the river had always run at the same place at Alamitos, at Old Canutillo, and at White's Ranch. He knew a place called Muleros when he was a boy. The place called White's Ranch was called the Muleros Ford and people used to cross there and the people called it Muleros Ford. At Alamitos there was a large bosque on the west side of the river and from there down to White's Ranch a big bosque was on the west side and there was not so large bosque on the east side, but when the river formed a playa, some little trees would grow there, but there was no bosque there. As he traveled along the road on the hills between White's Ranch and Alamitos, he could see the river at some places. They were on the hills and the river was below close to the hills. There were some places where he could not see the river, but you could see the river in most places along the road.

On cross-examination he says that he has not been asked these same questions or questions like these at any time until this present time so that no one knew what he knew about the river when he was young. He never told Mr. Chaves or Mr. Reber or Mr. Van Patten anything about what he knew until now that Mr. Van Patten called him and asked him about this business and asked him if he knew how the river ran, 2 or 3 days ago. He had not told Van Patten anything before that time. He arrived here on Monday, day before yesterday. He was first told that he was wanted as a witness at the hotel where he stops. He was first told to come as a witness on Sunday when he met Mr. Van Patten, who found out his name. He knew his name and knew him

personally before and had known him for many years, 30 years or a little more. Mr. Van Patten knows that he, the witness, lives at Las Cruces and he met one of the sons of the witness and asked him and his own son told him. He was stopping at his ranch at La Mesa and his son told Mr. Van Patten where he was and his son told him they would come pretty soon and take him down to El Paso. He saw Van Patten at Anthony, but he did not question him about the case and nobody has questioned him until now. Being asked in Question 186, if he made so many trips as a boy that he is able now to remember the exact location of the old river at all points between Alamitos and White's Ranch, he answers that he may recollect and he may not as memory is very frail, so long ago, and a person might not remember very well. Counsel follows this up by other similar questions and in answer to Question 189, which tells him that he does remember how the river ran throughout the whole distance between Alamitos and White's Ranch, the witness answers, yes, for the reason also that he came lately to examine those localities and that he was examining lately where the river used to run. He is then asked if as a boy he went along the eastern bank of the river from White's Ranch to Alamitos, and he answers, that the road was along the top of the hills, sometimes it came near to the river and sometimes a little further on; and he answers the next question in effect that he did not go along the edge of the river, he stopped at the different places that were stopping places and could observe the channel, the bank of the river, and could distinguish it very well, but as to walking on the edge he did not do it. He did not ever ride horseback along the edge all the way up. They always traveled the road in carts and were following the road. He never went fishing in the river up there nor in the lagoons and never went hunting in the valley along there. He does not remember how old he was at the time of the Mexican war. He thinks he

was not a grown man at that time. He remembers nothing about that war. He has not his baptismal certificate, his mother said she had it but it was lost. He thinks a copy cannot be obtained and asks how could he get a copy when his mother so long ago took them up the country and his father died and they have been living there ever since and she died herself at Dona Ana. He does not remember that he was baptized. He was about eight years old when he left Juarez and he was not baptized after that time. His mother did not tell him where he was baptized or if she did he does not remember. When he first knew the river between White's Ranch and Alamitos at different places it did not run to the east when it made bends, towards the west, but it always came back towards the east side. The hills forced it to make those bends to the west and then it came back running towards the east. At certain points it followed the bends in the hills towards the east and where there was low ground between two points in the hills it would follow that low ground. Counsel asks him in Question 211, "In fact, the river was making an effort at all times to run as far east as it possibly could?" and he answers in the affirmative, which as we have heretofore shown may or may not mean anything definite, and then goes on to show that the river made bends and as it made bends it went to the west and then run back towards the east on account of the hills and if it had run straight it would not have made any bends at all. Counsel then in the next question asks, "It never made any bends towards the west at any place except where the hills pushed it out towards the west?" And he answers, that is his belief, it is this, that as it struck the hills which were hard ground, solid ground, and went back to the west and then it came back again to the east. From La Bruja down the river touched the hills for some distance. between La Bruja and Tres Alamos it came to the hills, then it made a change and then it

came back to the east. Below La Bruja it touched the foot of the hills. Between La Bruja and Canutillo the water touched the edge of the hills, but he is not sure whether it made the bank right next to the edge of the hills. It ran near to the edge of the hills. At the house of Salado it is very plainly seen where the old bank of the river was. It was near the house, more than 15 feet, he thinks. He thinks that was a pole house. No parts of the poles are there yet, only the stones that the house had are there, which he thinks was a stone foundation, and he really does not remember whether it was an adobe or a pole house, but it does not make any difference what it was, the ruins are there now. Being asked to describe the indications of a house, he answers rocks and you could see plainly there where the old house used to be. He does not remember what year it was there. He does not know how many houses have been built at that spot since Salado first went there. Counsel then in Question 231 asks a question which is a favorite question of his, as to what was the greatest distance at the widest place between the hill road and the river, but the answer is not at all responsive to the question as it is in substance merely that the road they traveled was the straightest that could be got at that time. When the river overflowed it filled all the little ancones near the edge of the hills and, therefore, you could not travel on the lower road. When the river was dry there might have been some ancones by which you could travel in some places. All the time since he first saw it the river has run by New Canutillo, but he thinks it has had some changes at certain times. It did not get any distance from there and always leaned towards the same direction. In all the years he has known the river it has been very near the place where the bridge now is. In those early years the river used to run by Salado's house. He quit traveling that road on the east side of the river when he was very young. He made two trips and then he got to

be a grown man and his uncle died and for that reason he did not make any more trips. He made one trip going up before he heard the flag was raised and he thinks he made but that one trip until after the flag was raised, but he does not remember. He was then 7 or 8 years old. The next trips that he made were for the purpose of coming with his uncle who made trips in carts hauling beans and corn and other stuff down here to sell. His uncle used to make 2 or 3 trips each year and for that reason he cannot exactly tell how many times he made those trips but he knows that he made quite a number of them. When he came down the first time he may have been 12 years of age. Going up the first time there were several persons. His uncle had three carts and as the Indians were so bad as a general thing the people got quite a number of carts together to make the trips, both up and down. After the raising of the flag he did not make many trips, but once in a while, and the river ran where it used to run before. He does not remember that he made any trips just before the railroad was built, but he made one or more trips within a few years of the building of the railroad. He does not remember what year the railroad was built. At that time he was living in Dona Ana. He does not remember hearing of any people, when he was a boy, engaged in surveying the river between White's Ranch and Alamitos. When he first went up the valley Mesilla was already founded and he thinks they were just starting to settle Las Cruces. Dona Ana was the first town that was settled around those places, it was the mother town of all those towns up there. He knows a place called Fort Fillmore which is this side of Las Cruces and this side of the Ascarate Ranch. He was a grown man already when he first saw old Fort Fillmore, which was also called the Fort of Brazito. At that place the river left the Ascarate property and went towards the west. Being asked if the river at Brazito was in one or two channels, he says he thinks

so but he does not remember that it cut into one or two channels. There was no bosque on the east side of Brazito. In those early days on the east side of the river there was bosque only in those small anconas where there might be something, but all the bosque that there was to amount to anything was on the west side of the river and he thinks lands which would make good farms were also was on the west side. When he was a boy on those first one end of the valley to the other and left some very big bosques and some very good land at the same time. Prior to that time he thinks all the land there was there on the west side. When he was a boy on those first trips at certain points on the east side, you could see a tree here and another tree there, always scattering. At Alamitos there were cottonwoods on this side of the river, big trees and small, little trees, but he does not remember how many large trees. He thinks the river washed in and undermined those big trees and washed them away. Being asked if they are all gone now, in Question 231, he says there is one only there and it may be a younger tree than those he first knew, but it is right in the very same place that the others were. He saw that tree a few days ago, on Sunday, when he went there with Mr. Van Patten. Being asked how long he and Van Patten stayed there discussing the old river, he says that they did not have any discussion, that Van Patten only asked him if he remembered the place where Alamitos was and he said, "Yes", and then Van Patten told him, "Let us go down to that place and see if you can show me where that place was", and they went and he showed Van Patten the place and examined everything there and he told him, "This is the place and I think this tree that is here is one of the trees that were here when I first knew it". If it is not one of those trees it is right at the same place where the other trees were; and then he went back to Anthony. After leaving Alamitos he and Mr. Van Patten passed through the alfalfa field and then

went back to town and Van Patten then told him to wait until the next Monday and that he was going to bring him down here. He told him to go to Ysidoro Geck's house to sleep that night and that tomorrow morning Ysidoro would take him to go to examine things, in a vehicle, along there and find out if he knew where the old river used to run before. They went on foot part of the distance and part of the distance in the vehicle. Casimiro Benavides went with him the next morning and that was all. Another American was also there who he thinks is a surveyor, but he does not know his name. The name being suggested to him he says that Steen is the man. Being asked where Mr. Steen took him, he answers that they were taking him themselves to show him more or less and he thinks that Steen did not know a thing about it. He may have known about the old river or not, he was with them and when they got off the wagon he and Don Eugenio walked with them and when they made an examination themselves Don Eugenio asked them, "How is it? Do you find out anything of what you knew before?" And then they told him what they thought as they were examining the places as the river ran in those early days. In Question 304 counsel asks as follows: "And he said 'now I am not showing you. You are showing me,' Don Eugenio said, 'I am not showing you the river. You are showing it to me'." And the witness answers, "No, sir. He asked us, and then my brother and I told him of what we thought of that place." Being then asked who picked out the places that they were to go to, he answers that Don Eugenio said as they stopped the wagon, "Here is a place. Can you see anything about it? Do you know anything about it?" And then they got off the wagon and examined the place and at some places found an old river-bed. There is further cross-examination of the same character but without any effect. Being asked in Question 318 at how many places they stopped between Anthony and White's Ranch, the

witness says, at the Tres Alamos they went to examine the bend that the river made there, and they went inside where the Alamos are. Then opposite La Bruja he went himself as the river made another bend there, and then they followed the road down to Canutillo and they stopped there and they got off the wagon to go and examine the place where the old Salado house was and then they got on the wagon and came down all along the road. His brother and he were the ones who told him that they had examined those places where the old river used to run before as they knew and showed him. Between Salado's house and White's Ranch as they were going up the hill where White's house was they got off the wagon because he told them that he wanted to show them where the old road used to be in the early days and that was the only place they got off the wagon between Salado's house and White's Ranch, and then they came down to the California bridge and from there took the street-car and the wagon went back to Anthony. They started early from Anthony and from the wagon he showed the river and was examining the places that he used to tell about, and he told them from the wagon, "Here is where the river used to run". At Salado's house they are clearing some lands and from there down you see grass growing and as a general thing everything is cleared and you can see very well from the wagon. In plain view of the wagon road he did not see any plowed lands there. He saw two or three bordos but it seems that the flood has destroyed them, a little above the old brick kiln. He thinks that the river destroyed those bordos or the overflow water destroyed them. When he was a boy the river naturally overflowed at certain places. The channel of the river was low and when it carried plenty of water it left its natural channel and overflowed the lower lands, but the channel of the river was not changed. When the water subsided then the old channel was always leaning toward the east side of the valley and it always came

back and found the old channel. In those big floods the river did wash down big cottonwood trees. He thinks that he did go along between White's house and Alamitos when the flood waters reached from hill to hill, east to west, and in its great floods the river used to fill the whole of the valley, but when the water subsided and the river was getting dry, it would always follow its old current toward the east. Being asked in Question 336, to explain why it always went to the east hills, he says that his opinion is that it always is a lower place than the other places and for that reason the water followed the lowest place instead of the higher places. From Old Canutillo now the river runs straight all along the railroad track and it will never leave that channel as it will be prevented by the railroad track which prevents the river now from going to the side where it used to run before. Between White's Ranch and Salado's house the river is not very far from the railroad track as he saw it lately. They were traveling in a wagon and he is not certain what the distance is. In Question 339, counsel asks him, if he could plainly see the channel of the old river from the wagon on the road at all places from White's Ranch to Salado's house, and he answers, that he could not see it. It should be suggested here that there may be some misunderstanding at this point as this is not consistent with statements which he has already made. He then says that he could not see the present river at all between White's Ranch and Salado's house until he got here to White's house, when he could see the river running through the canon. Above that place he did not see it. At Salado's house he did not see the present river, he made an effort to see it, but could not. He could see the old river at that place. He could not see the present river and it cannot be done. In former years it was difficult to see the river from the road as the space was covered with big bosques and cottonwood trees. Here was the river, the road was on that side (indicating east). They traveled on top of

the hills. You could not see the river on account of the river running near the hills and you could not see the other side of the river on account of the immense bosques that were on the other side of the river. At certain points you could see all banks of the river on both sides, but from the west bank in that direction you could see hardly anything on account of the bosque. He is told in Question 348, that he said that the bosque prevented his seeing the river at places, and he answers, that he did not say that but he referred to seeing the edge of the bends of the river and meant to say that you could not see the edge of the bends of the river from the road on account of the bosques that were on the west side of the river on the edge of the bends. And he then says that he is explaining the manner in which the river creates bosques, it leaves seed on the ground and then the little trees commence to grow up and the bosque gets thicker and thicker every year. When he was a boy he knew a place called the Height of La Bruja which was somewhat high. They called it the height or alto because that was the name of the stopping place, the travelers used to stop at that place. There were so many stopping places because people traveled with oxen. There was a stopping place sometimes outside of Canutillo. The Heights of La Bruja were 10 or 12 feet from the level of the ground, somewhat high. Being asked in Question 359 if the wagon road and the railroad both run over those heights, he says, no, and that the railroad track is right on the channel of the old river, where it used to run before, at the place that they call Tres Alamos. At La Bruja the railroad track runs in the bed of the river. Between Tres Alamos and La Bruja some parts of the distance it runs in the channel of the river. It is a little above the brick kilns at Vinton. Where the brick kilns are it showed that there was a bend there, but it came back towards the east. The old river ran to the side of the east of where the brick kiln now is. He became acquainted with

Duraznito and at that place they stopped sometimes. He does not remember that he stopped there on his first journey up when he was eight years old. He knows that they stopped there sometimes, but he does not exactly remember on what occasions. Sometimes they stopped above Duraznito and sometimes below. He is then asked in Question 376, "Well could you stop any place and get water?" And he answers, "Yes, sir"; but it seems reasonably certain that he understood the question to mean whether he could stop at any of the places mentioned and get water. In the next question he is asked, "Was the old river-bed between the hills and the river channel as it used to run when you were a boy?" And the witness very naturally answers, "I do not understand the question". The record then states that the interpreter explains to the witness in Spanish and the witness then says that all the time the river came running towards the edge of the hills towards the east; and then in Question 378, counsel says to him, "And left no place for an old river-bed?" What is meant by this question it is difficult to say, but the witness answers that when the water subsided and the river got dry, then you could notice the channel of the river. He did go along there when there were big floods. He did not call it the river wherever the eastern border of that flood water was, but he called it river where the bed of the river was. The river ran all the time straight and leaning towards the east with the exception of bends that the river made around there. Duraznito was not a point, it was a stopping place. There was no ranch there of any kind, it was a little height. The road used to run along there and there was some monte along the road. He is then asked in Question 386, how was he able 3 or 4 days ago to find that place and to tell that it was Duraznito which he knew when he was a small boy, and he answers, because they were following the road and he came with Mr. Van Patten and the other men and they were following the

heights there and he found out and told them, "Here is the place that they used to call Duraznito." Then they got off the wagon and he told Van Patten to stop the wagon for them to go and examine the place and they did so, and then Van Patten asked him, what place is this that you remembered in the olden times, and he answers, here is the place that was called Duraznito. He does not remember what he found there the other day which was there when he was a boy. They have built a railroad there and have paved the wagon road. The channel of the old river came right straight where the railroad is now and he thinks that in many places and somewhere near Canutillo the railroad track is now where the river used to be. It might be that the old river was to the sunrise side of where the railroad now is. At Duraznito the river ran towards the side of the west but close to it. He does not remember a peach tree. Everybody said that there was a peach tree there, but he did not see it himself. He went there a very few times. They were traveling and taking along the animals and did not pay much attention to those things in those days. He has traveled along there during the night time. He does not remember how many times in the night between White's Ranch and Alamitos, perhaps twice during the time he used to travel with carts. The first time he went up when he was eight years old, he does not remember but he thinks it was during the night. When he was a boy he heard the name of Uranga mentioned only and did not hear the location of his ranch mentioned. He did not know Chapo Reyes but heard his name mentioned. He did not know a man by the name of Gonzales, but he knew Gold Tooth Jackson. He knew him many years ago. He had already traveled that road long enough. He was not there when the witness passed the first time and he does not remember where he lived, but he is certain that he lived there some place years afterwards. He does not know what Jackson's business

was. He never saw Jackson around Duraznito. It may be that he knew him at Las Cruces, but he knew him many years afterwards, but he did not have any intimate relations with him. He cannot remember the date when he first knew Scott, but he knew him at Alamitos where the government established a stage station for the purpose of the coaches of the mail that stopped there and they changed horses for the mail service. When he first saw Scott at that place he was already a grown man, but he does not remember that it was after the Texans had come. When he first went up the valley the mail was running by Alamitos. He does not know that they went to California nor where they went. He does not know where they crossed the river going towards California, but they went up as far as Santa Fe during that time. He did not know Gualdarama but heard his name mentioned. He did not see him living near where Vinton is. He knew a man named Cumplido who used to live in Dona Ana when he was a young man and the witness knew him there. He did not see him in the valley between Alamitos and White's Ranch, but he heard that he had a ranch there, when he the witness was over 30 years, more or less. He did not know Ben Dowell and does not remember when they cleared land in the Canutillo grant and opened a farm there. He heard it said that somebody was digging an irrigation ditch near Canutillo, but he knew nothing of that himself personally. He did not know Price Cooper and never heard of him in the valley above White's Ranch. He does not know a monument to the west of the river near Dona Ana or he does not remember of it. When the man Scott came to Alamitos there were some ruins of an old ditch that was there, which he thinks he used to irrigate the garden with. It was on the east side of the river. Scott was not a very tall man, regular size, but he does not remember him it was so many years ago. He was an elderly man. He did not know

White; if he ever saw him he does not remember. He did not know that White's house was ever a custom house. He never saw any soldiers or surveyors camped at White's house. He does not remember if he ever heard of surveyors and soldiers surveying the river from White's Ranch to Alamitos and he never saw them so engaged. When he first saw Old Canutillo he did not see any houses there. He does not remember exactly but he thinks he stopped there the first time. He thinks there were no houses there the second time nor the third trip. He does not remember whether there were any houses there the fourth or fifth trip. It may be there were then some. He does not remember if there were one or more houses there and he does not remember if he ever in the early days saw any houses at Old Canutillo. He knew Doroteo Salado who lived here at Chamisal in Paso del Norte. He heard people say that this man lived at Old Canutillo at certain times, but he does not know why he lived there at those certain times and he did not see his house at Old Canutillo. He heard people say that there was a little spring at the edge of the river near Old Canutillo and that the water came into the river, but he did not see it. He was told that at this house of Salado there was a little spring nearby, but he never saw it himself. In the early days and on his first trips he did not see houses at Old Canutillo and he does not remember that he ever saw a house there before the railroad was built. When Scott lived in Chamisal he was not very tall, he was not very fleshy, he was of ordinary size and he was not dark complected. He was a little fat but not very fat. He was not a fat man like you are (indicating Interpreter Flores); he was of ordinary size, neither fat nor lean. The Texans when they came here fighting against the United States went from this way up in '61. The witness lived at Dona Ana then. He heard the name of John Baylor, but he never knew him. He thinks he commanded the Texans and

he thinks they fought a battle at Mesilla. He does not remember but he thinks the southern men won the battle, the northern men went and kept on going farther up. He does not remember whether they got away or were captured but it is his idea that they were not captured but that they went away. He does not remember how old he was when the battle of Mesilla was fought, but he was already a grown man. He does not remember that the northern soldiers went to the east and were captured by John Baylor. After the battle of Mesilla the Texans went up to Fort Valverde and it was known that they had a battle. He thinks the same Texans who fought at Mesilla fought the battle of Valverde because companies of soldiers from Texas passed by the road all the time. The battle of Valverde was just after the battle of Mesilla, but he does not know how long afterwards. They went traveling northward all the time. He thinks the battle of Valverde was fought something like the next year after the battle of Mesilla because these southern people came back down this way in '62. He heard the name of Sibley, but he never knew him. He thinks he fought with the Texans at Mesilla, either him or the other man Baylor, but he does not know. Almost every day companies passed by the town of Dona Ana where he lived but he does not know whether it was the same regiment or another regiment but they were southern people. He does not know the year when he moved to Dona Ana from Las Cruces nor how many years he lived in Dona Ana. He is 71 years old which he knows more or less by judging by the age of his brothers and his uncles. The brother who went with him to show the river is older than he, he thinks three years older. He has been only once to show the river. He did not make a declaration as to what he knew before coming in here. Nobody took a written statement from him. He is then asked to state again who were with him when he showed the river, and he answers himself, his brother, Eugenio

Van Patten, the surveyor who was here a little while ago and the driver. The surveyor did not take any statement from him about what he knew, or if he took it the witness was not present and he does not believe he took it. He thinks that Van Patten did not ask him questions and write down anything. They asked him questions but he thinks they did not write them down. They only conversed about the matter but he does not believe that there were any written answers. He conversed with Mr. Amado Chaves and his lawyer here (indicating Mr. R. W. Reber). He talked and conversed with those persons at the place where he is stopping. He first conversed with them on Monday before he came on the witness stand. Being asked what they conversed about in Question 515, he says, to be ready, for him to be ready at a certain date, and that they had to go out and see him as he does not know the town here, for them to bring him here when he had to come and that was all that was said. No one told him to deny that he had talked to these gentlemen. Being asked if he would swear that he did not tell these two gentlemen anything about the facts in this case, he answers, no, that the conversation that he had with them was as to what he knew about these places before he came here. Then in Questions 521 and 522, counsel asks him "Why didn't you say that before?" And he says, "I was not asked." At this point on page 1579 there is a disagreeable although brief colloquy between counsel when counsel for Texas asserts that the witness was asked repeatedly and asked yesterday and today and swore positively that he never spoke to a living soul until he spoke to counsel for New Mexico, who heard him, and thereupon counsel for New Mexico declares that he never said anything of that kind and he never heard him. Counsel then asks him if he denied yesterday that he ever talked to a living soul about the facts in this case and he answers that he thinks he did not. Counsel then seeks to drive

him into admitting that he says now that he discussed it fully with these two gentlemen since he came to town, but he answers that he has not had any conversation with them neither but they have asked him some questions and he told them that he had come here and when the time came, to testify here. He is then asked if these gentlemen or either of them talked with him since the adjournment yesterday about the facts in this case and he says that these men, Mr. Reber and Mr. Chaves, were at the place where he is stopping and they were examining another man but they did not say anything to him about his testimony of yesterday and what he was going to testify about today. One of the two asked him if he knew anything about Alamitos in the early days but he does not remember which asked him the question. They asked him about the river between Alamitos and Tres Alamos and he told them what he knew and that he could state what he knew at those early days and that he would in giving his testimony tell all that he knew about the old river. They asked him if he knew about the old river and if he could give his testimony about what he knew and he said, "Yes", but not because he told them in detail anything about what he knew. He does not remember if they asked him about La Bruja or about the Salado house. They asked him what he had known at the early days of those places and all those locations in conversation only and not in the manner that they are asking him questions now. Counsel then asks him in Question 542 "What witness were they going over the matter with last night?" Although the witness had only said that they were examining another man in the morning, so that he responds to this question with another, "Last night?" And counsel tells him that he said they came to talk with another witness following the adjournment and he then answers, that it was a man who is sick whose name is Valentin Abalos, he is sick. They were only conversing with him

when the witness left the room. While he was present they asked Abalos how he felt to find out whether he would be able to come to the court here or not. The witness did not hear any more, he was not feeling very well and he left the room. The witness says his brother is here and is stopping where he is and these gentlemen he has mentioned have been talking to him there just about the same as they did with him. He thinks Don Eugenio was not present during these talks, perhaps he might have been, there were people coming in and going out. He has talked with these gentlemen about once or twice. There were no other witnesses there when they talked with him. He and the old man who is sick and his brother were the only ones who were present. He thinks the surveyor was not present.

On re-direct examination he testified that when his uncle died he was about 14 years old, more or less. He was rather large in size but he thinks he was about that old only. His uncle took him to Dona Ana when he was about 8 years old and before he died he traveled with him up and down the river. One or two trips per year. He thinks he heard that the flag was raised at Mesilla before his uncle died. He does not remember when Fort Fillmore was built. Between the Fort and the river there were a few scattering cottonwood trees. The big bosque was on the west side of the river. The bend in the river below La Bruja turned very soon to the east again. The bend was a little above Vinton. It started a little above Vinton near La Bruja and came to the place they called Vinton, it ended near Vinton or below Vinton almost in front of where the brick kiln is now. It came to the other ancon that was known by the name of Sanguijuelas. When he first knew the place where Vinton and the brick kiln now are the river was on this side of that place. He says first, on the west, and then on the east side and in answer to the next

question, he says the truth is that he does not remember and he is not very sure. The brick kilns [illegible] the place called Vinton are on an elevation of groun[illegible] and that elevation is a part of the hills that slope up to the east. The river was right close to where the brick kilns are. It appeared that there was another bend there that always came back to that place to the east. The river was right adjacent to where the brick kilns are and he then, being asked on which side of the brick kilns, says on the east side, to this side (pointing westward); on the west side he saw an acequia at or near Alamitos, long after the first time, but he did not see water running in it, he never saw water in it. He does not know where it came out of the river. He did not see that ditch above Alamitos becau[illegible] there they took the road that went along the Llano de las Crucitas and they were going from there away from the river. He does not know how far below Alamitos that ditch went nor who dug it. When he saw that ditch he was more or less 14 years old. He never saw the house of Gualdarama but he heard it mentioned many years after those old days. He heard that there was a man by that name aroumd there burning lime, but he never saw him. When he first heard about Gualdarama up there he was a boy yet, but not very young. He remembers seeing the places where they burned lime between Tres Alamos and La Bruja and they are there yet. He does not remember when he first saw them but he was older then. He first heard about Gualdarama long after the death of his uncle. The Cumplido whom he knew was named Juan Jose Cumplido and the witness heard it said that he had built a house at Canutillo, at New Canutillo. When he recently went to show the river he stopped at Durazmito and got to that place on foot. They were traveling along the road and they told Don Eugenio to stop in front of the place and they walked to it and examined it. They went to the west from the road to

get there and he was able to recognize that place as the one at which he stopped when he was a boy and the other places which he saw at that time he recognized them as the places that he knew. He did not have any difficulty in finding and recognizing those places. There are some places where the timber has been cut off but he recognized the places as the same and found the places where the river used to run in that time. After he went to show the river he arrived here in El Paso the same day, Monday, and came in a carriage which brought them to a place where the street cars are and from there the carriage went back and they took a street car. It was not very late. They got down here before dark. He is not very certain whether he saw Mr. Chaves and Mr. Reber that same night or the next day. He thinks it was night before last but he is not very sure. Before he began to testify yesterday he saw Mr. Chaves and Mr. Reber in the forenoon. His head feels a little better now than it did this morning. He suffers very great pain and it affects his memory. He lives in the house but he is out a good deal.

On re-cross examination in Question 623, counsel asks him if his memory was fine yesterday for about an hour and he says he thinks so. In the next question counsel says "Then it began to fade?" And he answers, yes, and that he will tell you that these few pains that he feels once in awhile have affected his memory. Counsel then on page 1586 proceeds to worry the witness about his age, telling him that yesterday he said that he did not know his age and today he says that he is 71 years old and the witness asserts that yesterday he said he was 71 years old; but counsel then in Question 631 asks him how he is able to remember this morning that he is 71 years old when he did not know it yesterday, and he then asserts positively that he told yesterday that he was 71 years of age. When he got off the wagon at Duras-

nito on Monday they crossed the railroad track and very close to the track he told them that the river used to run right there, run in a direction south to come to strike the banks at White's Ranch. He cannot tell the distance, it may have been 100 yards or 200 yards but he thinks it might not have been 500 yards. He does not know about yards but knows that a yard has more inches than the vara, but he does not know how many more. From the old wagon road to the old river at Duraznito it was a little over 100 yards, it might be less. The river ran straight from Old Canutillo to White's Ranch but at Old Canutillo it was leaning towards the east and below Canutillo coming towards Duraznito it seemed that it made a small bend, not very much, and then it took the direction to where those old brick kilns are. It was running straight but it made bends. Below Old Canutillo it made bends; where it struck Duraznito it seemed as if it made a bend there. He does not remember if there were any cottonwood trees in that bend. All of the bosques were on the other side. There were some tornillos and they were traveling at some distance. The tornillo was very thick and they could not see the river. Then at certain points the tornillo hid the river from him when he was traveling on the main road. From Duraznito this way the river makes a bend. During the early days when the river came down they remained as esteros and there is where he thinks that on the east side of the river there grew some tornillo in those anchones. Above that place there were some scattering trees, cottonwoods. Half way from Vinton to New Canutillo the mesquite prevented them from seeing the river, but where there was no such mesquite they could see the river from the road. Tres Alamos was right next to the edge of the monte where the river struck the edge of the monte. The road was very near to it at that place. Then in Question 651 counsel tells him that he, the counsel, said half way from Alamitos to Tres Ala-

mos; which probably was what he intended though the record does not show it, but the witness is asked if midway, when a boy, he could see the river from the old stage road and he says he does not remember.

Next we come to the testimony of

CASIMIRO BENAVIDES

a brother of the witness who has just testified and his testimony begins on page 1588 of the record.

He lives in Dona Ana and has lived there since he was 12 years of age. He was born at Paso del Norte and his uncle Juan Jose Benavides took him to Dona Ana and raised him. The witness who has just testified, Trinidad Benavides, is his brother and the whole family went to Dona Ana. His father and mother were dead. He is older than his brother Trinidad. He is 74 and Trinidad is 71 years old. He does not remember in what month he was born, but he remembers that he was 12 years old when they took him to Dona Ana. Before he went there he lived at Paso del Norte on the other side of the river and was born there. They were all born there, four brothers and two girls. Two were older than he but they are dead. All the others are dead except Trinidad and himself. He remembers about the raising of the flag at Mesilla and he was living then in Dona Ana and had been living there some time. He did not go to see the raising of the flag. They say that the flag was raised in '54, but he does not know. He heard about it in Dona Ana at the time it happened. People went from Dona Ana to see the raising of the flag. At that time he was grown up. After he went to Dona Ana with his uncle he came down to Paso del Norte with carts to take provisions with his uncle and came with servants that he had and they made several trips to Paso del Norte and used to take wine from here and

from there they used to bring beans. He must have been about 20 years old when his uncle died. He was not married when his uncle died, some years passed before he got married. He made trips with his uncle to Paso del Norte from Dona Ana, a few trips. When they did not come in carts his uncle used to send him on horseback to attend to business. He had peons working at El Paso and used to send him to see what they were doing. He had vineyards and they were cultivating them and from those vineyards he took wine to Dona Ana. The things that he brought from Dona Ana they used to sell here. That is a better country for corn and beans up there than it is down here. His uncle went there first to build a house and took the family afterwards. He had been there a long time before he took them up and had already cultivated land there. When he made those trips he traveled on the east side of the river and never went on the west side and is not acquainted on that side. It was longer that way and it was straighter this way. He became well acquainted with the road and the different places along the road. The road went over the hills. He became acquainted with Alamitos which was a stopping place and their uncle took them to that place. He knew a place called White's Ranch. Alamitos was above White's Ranch. Between White's Ranch and Alamitos he did not see any other road except the one they were traveling and it ran through the brush on the hills from White's Ranch to Alamitos. It was near the river and he could see the river from the road. There was no other road going up the valley between the one he traveled and the river. The road all the time was through the monte of mesquite. The river was near the place called Alamitos. It was a stopping place where all the people stopped. Travelers coming from the Brazito Fort used to stop there because there was no water in any other place. Right near the fort there were some water holes, but from the water holes to Alamitos there was a prairie

and there was no water. The place was called Alamitos because there were some cottonwood trees there, some small cottonwood trees. When he first saw that place no one was living there. Long afterwards there was an American there with a post. He does not remember the man's name. He knows him but he did not know his name. His family was there, his wife was there. There were some cattle there, some cows and he saw some horses there also. He never saw any of the stage coaches stopping there and never happened to meet them on the road. The river was very near to the place where the station was, about as far as from that window to that place, indicating the length of the court room which is stated in parenthesis to be about 45 feet. The river ran straight to a place called Tres Alamos which was a stopping place where people used to give water because the river was near there. There were some very large cottonwood trees there, very thick. The river came very near those trees. There are some trees there yet. They are not so big. Above the place called Tres Alamos there was a bend in the river which went towards the west, he thinks for more than one mile, it was quite far. It began at Tres Alamos and came back to a place called Sanguijuelas. He is not clear about the bend because he then says that there was not a bend above Tres Alamos and there was no bend below Tres Alamos. He knew a place called Alto de la Bruja farther down below Tres Alamos. Tres Alamos was very near the hills. He has recently seen those places. The present railroad track is very near to the Tres Alamos, as far as from here to that door (indicating about 25 feet). At that place when he first became acquainted with the river it was running right there where the railroad is now. From Tres Alamos to the Alto de la Bruja the river ran towards the south near the hills and near where the railroad now is. Below La Bruja the river ran the same, towards the south. The bend below Tres Alamos ended at Sanguijuelas. It

started at Tres Alamos and turned there and went to Sanguijuelas. From the place where it started the river always went down towards the south. It formed a bend but the river always went down and came back to the east where the railroad is now. There was the end of the bend where the railroad is now near Sanguijuelas which was a stopping place that some people stopped at. The water was near there. The road was very near Sanguijuelas. He did not know the Arroyo de Artesa. He did not know any name for that bend in the river which ended near Sanguijuelas. That bend went quite far to the west. He has recently seen that place again. The river runs near the railroad, it is running in that bend. Where the railroad is, is the old river-bed. At that time it was the river where the railroad is now. If you would take away the railroad from there, the river would run to the hills. He has not seen any bend there in the present river. He knows a place called New Canutillo and has seen the bridge near that place. When he first knew the river there was no bridge there, but it passed right by where the bridge is now and went down. When he first knew it the river was right there where New Canutillo is and was right near where the railroad now is. He heard that there were beavers around there, but he did not know where they were and did not see them. In those early trips he became acquainted with Old Canutillo. When he first knew that place he did not see any one living there, but long afterwards he did and they said that the name of the man was Salado. It was below New Canutillo. From New Canutillo down to where Salado lived the river ran towards the south, near the hills and where he lived the hills were very near and the river was very near. He was told that there was a spring near there, but he never saw it. Nothing called his attention to it. He did not see any trees around the place where Salado lived. On the west side of the river there were a great many cottonwood trees. He knew Jose Cumplido and when he

first knew him he was about 16 or 17 years old. He does not know which was older, they were both boys. He might have been older himself but he does not know. Cumplido lived at Dona Ana. The witness does not know if he is still living as he has not seen him for many years. The last he heard about him he was told that he lived at Canutillo. He became acquainted with Duraznito which was below Canutillo where Salado lived. He does not know a place they now call Montoya. He has heard the name but he does not know where the place is. From Canutillo to Duraznito the river ran towards the south along the place where the railroad is now and near the hills. He did not know Chapo Reyes. He heard his name only. He did not know where Reyes had a ranch but he was told that he had a ranch there somewhere. When he recently went up the river he does not remember seeing a place where there were some small brick houses and a ruined brick kiln. He was acquainted with White's Ranch. When he first saw that place there was nothing there. Afterwards there was a house there and a family there. It was called White's house, but he does not know who lived in it. There was a very big corral for cattle adjoining the house. It was on a height and very near the river. The bank was very near the house. The house was from the river bank as far as possibly the length of this room, but he thinks it was less. In those early trips he did not know the Piedras de Amolar. From White's Ranch down to the canon the river ran near the hills and the water entered the canon. The road which he traveled in those days went very near to White's Ranch. Above White's Ranch that road went at the edge of the hills clean up to Alamitos which was the last stopping place. There was only one road between White's Ranch and Alamitos.

On cross-examination the witness says that the first trip he made up the river his brother was with him and the whole family went along. He does not remember

what year it was. He was about 12 years of age. He does not remember everything that happened, they were only traveling. At that time there were Indians in the country. Sometimes travelers traveled at night to avoid the Indians, and he and his companions sometimes made trips at night and sometimes during the daytime. After he first went up with his uncle he does not remember whether his other trip was made before or after the flag was raised at Mesilla. He does not remember how many trips he made in the next three or four years after the time he went there first, but he made several trips. He made trips without his brother but he cannot remember the times. He does not remember the Mexican War. He heard that the Americans and the Mexicans had a battle at Temascalitos, but he does not know what became of the Americans who fought the Mexicans, he never saw them. When he moved with his uncle to Dona Ana the stage coaches were not then running or he did not see them. Afterwards he saw them at Las Cruces as they passed through on their way to Santa Fe and to Dona Ana. He had been at Dona Ana several years when he first saw the stage coaches. He was told that they went to California. He had been in Dona Ana many years when he was told that. Scott was living at Alamitos before the stage coaches passed and his wife was with him. She was a tall woman more light than dark. She was Mexican and more good looking than ugly, she was white and good looking. He did not see any others living there when he first knew Scott and his wife. It may be somebody else was living there, but those are the only ones that he saw himself, Scott and his wife. There were no houses except the house where the stage station was. He did not pay any attention to how many rooms that house had nor as to the material of the house. He thinks it was a pole house. It certainly had a chimney but he did not pay any attention to it. Being asked in Question 210 how far was that house from the edge of the river

he says about as far as from that wall to this wall, (indicating about 45 feet), near the river bank. There was a little valley where the Alamitos were and the house was in the little valley and from the house they went to the river for water. The flood waters would not overflow the place where the house was or he did not see it. The river bank was about that high (indicates about 4 or 5 feet). He never saw the river go over the little valley where the house was. Opposite Scott's house the river was very wide towards the west. It was the same as the old channel that is there now, the same bank is there. The eastern bank is there and on the west side there is only bosque. He did not see any bank on the west. He says he cannot see very well, photographs being produced by counsel. When he first knew Alamitos there were several small cottonwood trees. The largest trees were near the house. One of those trees is there yet; and being asked to show how large they were, he says about that thick (indicating by extending his arms in front of him with tips of his fingers about six inches apart). They were that thick when he first saw them and there were others about that thick (indicating about 7 or 8 inches). He does not know that the tree which is there now is one of the trees which he first knew, "But there is one of those trees that was left there". He further says because that tree is there now he believes it is one of the trees that were there then. The old house was to the east of where that tree is and being asked how far from that old tree was the house as he first knew it, he says perhaps a little longer than from this wall to the other wall (about 45 feet). There were no hills near that house. To the east and north was a low prairie stretch of country with mesquite and tornillo. He first heard of a place called Tres Alamos when he was with the family and his uncle when he showed all the stopping places. His uncle said that it was a stopping place. And being asked if they also stopped at La Bruja, he says, no.

He heard of La Bruja in the early days and it was this side of Tres Alamos, below Tres Alamos, not very far. He does not believe it was a stopping place. As they passed by they said they called it La Bruja, the height of La Bruja. It was not a high hill, it was a little hill, a few feet above the plain of the valley. It was not as high above the valley as the height of a grown man. The brick kilns at Vinton are south of La Bruja. He cannot state the distance from the brick kilns to Tres Alamos, nor to La Bruja. Alamitos is near Anthony. He did not know Gualdarama nor where his lime kilns were, nor did he see where they said Gualdarama had been burning lime, when he was a boy. He has not paid any attention as to the lime kilns when he has passed by. He went to show the river, he thinks on Monday with his brother, Mr. Van Patten and the surveyor and the driver. No one else was present. He left the wagon when his brother left it each time and he rode each time when his brother rode. In the early days he knew the Estero of Sanguijuelas which was below New Canutillo. At that estero he showed the river. He looked to see the river to the east from the road and he went to show the river from the wagon road to the west and went about half a mile. They did not see anything of the new river, but evidently there was some misunderstanding about this because in answer to Question 283, he says that they saw the new river from where it is running now. It is right next to the railroad at the Estero of Sanguijuelas. The old river is to the east. He cannot tell the distance they went east of the present river but they went to show it in that direction. The Estero is to the east of the old river channel. The river was east of the wagon road and the estero was still east of the old river. He never saw the beaver dam, he heard of it only. He never knew where the place was nor does he know now. He was lately where New Canutillo is. Before he was there on Monday he had not

seen New Canutillo before but only Old Canutillo. The place where New Canutillo now is is covered with houses. He never saw any house at Old Canutillo until he made his second trip from above down here and that was some years after he moved up with his uncle. When he first saw the house there, he does not know if Salado lived in it. It looked like a small house. He made trips for many years. He knew when the battle of Mesilla was fought, he was living at Dona Ana then and he heard people say that the southern people fought with the northern people. He heard that there was a Colonel Baylor and General Sibley. After he heard of their coming and fighting the battle at Mesilla, he did not make more trips down this way. It was not long before they came that he made trips, perhaps one year. After the battle of Mesilla it was said the Texans had gone up above. He saw some of those soldiers. Dona Ana was about nine miles from Mesilla and Dona Ana is on this side of the river and is very far from the river, three or four miles from the town to the river. There are bosques between Dona Ana and the river. Dona Ana is in the valley. When he first knew it, the river there ran on the east side of the valley and the town was on this side of the river. The valley is very wide at Dona Ana, perhaps more than 3 or 4 miles. From Dona Ana down this way there is no bosque on the east side of the river. All the lands are under cultivation there now. When he first knew it there was bosque on the east side of the river. He did not know anything about a monument opposite Dona Ana on the east side of the river. He knew when the country south on the west side of the river from Dona Ana down was a part of Mexico. He thinks that it ceased to be a part of Mexico when they raised the flag at Mesilla. Before the country was the United States, he did not know of surveyors surveying the old river. He never heard of a Mexican engineer named Salazar and he never saw any American surveyors nor

Mexican surveyors surveying the river between White's Ranch and Dona Ana. He never heard of an American named Emory nor Bartlett. The battle of Mesilla was fought first and afterwards the Valverde battle. He does not remember how long afterwards but as he was living at Dona Ana he saw the troops that passed there who were going to fight at Valverde. He saw some soldiers pass by. Valverde is very far from Dona Ana. He does not know that those soldiers who fought at Mesilla went right on up and fought the battle of Valverde, but he thinks so. He does not know that the battle of Valverde was within a few weeks after the battle of Mesilla. He does not know how long it was after the battle of Mesilla. He thinks they had many battles in this country in those days, but he does not know. He does not remember of any other battles. He was a grown man at that time. He remembers about the river very well. He is asked in Question 351, if he remembers more about the river than he does about those battles that took place when he was a grown man and he says that about those battles he only saw soldiers marching in going up above. He remembers about the same. Before he moved up to that country he never saw soldiers around Paso del Norte and did not know that there were any. He never saw any soldiers of the United States near Paso del Norte before he moved up there, nor any soldiers on this side of the river opposite Paso del Norte, nor at Fort Magoffin. The Texans who passed by were the first American soldiers he had ever seen. There was only one bend below Canutillo which started from Sanguijuelas. White's Ranch is very far from it. Between Alamitos and White's Ranch he knew two bends, one that strikes Tres Alamos and from Tres Alamos to the Sanguijuelas. Counsel then in Question 363, tells him that yesterday he knew only one bend to which he answers, there were two bends there; and he is then asked, who reminded him that there were two bends,

and he says, no one has said anything to him about it, he knew them himself. He says again that the river ran straight from Alamitos to Tres Alamos. Being told in a question that there was no bend between Alamitos and Tres Alamos, he says, that bend is below that comes to Sanguijuelas. There is a bend below Tres Alamos and the river did run straight from Alamitos to Tres Alamos. The old road from New Canutillo below ran all along the edge of the hills near the old river, about as near to the old river as the railroad track now is. It was up on the hill to the east of Salado's new house. It was not very far, maybe 100 yards. He showed the old road on Monday when showing the old river. You can see stretches of the old road along the old wagon road and those stretches are the ones that he showed them. Between where the brick kilns are at Vinton and down to New Canutillo the old road ran to the east side of the railroad but he cannot tell exactly how far away. It was from 50 to 100 yards, more or less. He could see the old road on Monday as he came along there. He is then asked on which side of where the railroad now is was Salado's house, and he says that he does not know if it was Salado's house, the house that he knew. He then says the house that he first knew was to the east of the railroad and from that place on Monday they saw the present river and it was right close to the railroad track and it goes straight towards the south. It goes straight to White's Ranch. You can see the new river all the way but not all of the river, from Canutillo to White's Ranch. At places it is very far. At Duraznito you could see the new river and it is very near the railroad at that place. Between New Canutillo and Old Canutillo he showed the old river-bed on Monday and could plainly see it between those two places. When he first knew Duraznito there was only grass there, it was a watering place, there was no ford at that time, there was water in the river running. The hills are near that

place. They called it Duraznito because there was water. The animals grazed there and the grass was very green most of the time. The valley was wide enough where they grazed their teams, it was good grass. There were some cottonwoods scattered here and there, large and small. Below Duraznito the valley extended down below where the railroad is now. There was no valley except water where the railroad is now. They grazed their oxen near the monte where there was quite a lot of good grass, only when they stopped as travelers they grazed them on valley grass. At Duraznito where the railroad is now is where the river used to run and it ran to the side of the east. Below Duraznito the old river ran to the side of the east, not far and it ran straight. The railroad runs straight. The river has not run towards the west. Duraznito was on the east side of the railroad and he has said that all the time and the river was on the east as far as White's Ranch. It seems clear that at this point counsel had succeeded in confusing this old man very badly. In the early days he did not know a man named Ben Dowell. When he first knew the river no one lived between Alamitos and White's Ranch. He does not know when they cleared some land and made a farm between Alamitos and White's Ranch, and he did not see any farm or ditch between those two places. There was quite a lot of bosque towards the west. The bosque was all to the west. On the east side of the river there was one cottonwood here and another there, at a long distance from each other. What there was more of was tornillo. On the east side there were some little stretches of tornillo brush in the low places. He never saw them cutting wood between White's Ranch and Alamitos, nor rafting wood in the valley towards Paso del Norte. He never went there after wood. Before he left Paso del Norte there was not plenty of wood around that place and the wood was quite far from there. They got wood from the mountains and from the bosques below Paso

del Norte. They told him there was quite a lot of wood in the bosques below, but he never went, his uncle's peons were the ones that were sent after the wood. He has never been at the old town of Amoles. He did not know Simon Enriquez and he knew nothing about the west side of the valley above White's Ranch. He saw that people took that road on the west side of the river in going to Mesilla and towns below there. Some took that road and some took this other road, as they pleased. He does not know the name of the road on the west side of the river. He did not know a man named Uranga in the early days. He heard his name mentioned but he never knew him. He never knew anything about the grist mill at New Canutillo, never heard of one between Alamitos and White's Ranch. He does not know what White did. He only saw the house and did not know the man. He saw cattle there and a family at the door of the house, but he never saw him. When he first went up the river there was no house there. His next trip after the first one is when he saw the house there. He saw a woman there. He did not see any children, he only saw the woman and he calls the woman a family. (Among the Mexican people a man frequently speaks of his wife as his family.) He then says he does not know if the woman was the wife of White, nor whether she was an American woman as he saw her from far. He saw no other persons there. White's house was to the east of the railroad. Between where that old house was and the edge of the river there are both the new wagon road and the railroad. Before he moved to Dona Ana he does not remember if anybody lived on this side of the river opposite Paso del Norte. He saw some persons, but he does not know if they lived here. He does not remember if there were any houses from where he crossed the river leaving Paso del Norte to White's house. He did not see any houses on this side of the river between the ford and White's house. He had heard Fort Magoffin

mentioned, but he does not know where it was. When he left for the first time to go to Dona Ana it may be that there was a flour mill in this vicinity, but he did not know anything about it and he never saw any. He was not in Paso del Norte after the Texans went away, but he went to Santa Fe to work for a man and stayed there two or three months and went in some little wagons on this side of the river by the Jornada del Muerto. It took three days to cross that place and there was no water. The jornada was towards the east and the river was to the west. Being asked in Question 489, if he went along where Engle now is, he says he does not know where the place is and he is then asked if he went along where the railroad now is and he says there was no railroad then. He says there was only the Height of Roblero, then Perillo, then Aleman, then La Laguna, and then the place called El Paraje where they found water. Being asked in Question 492, if he came back to the river going north near where San Marcial now is, he says he does not know. He heard somebody say that San Marcial was on the west side, but they took the road on this side. In going to Santa Fe they crossed the river at Valverde. They crossed it once when they went up above. Crossing the river he got on the west side, and Santa Fe as he remembers is to the east at a canon that comes from the mountains. It may be he crossed the river twice farther ahead. When he made that journey to work at Santa Fe, he thinks he was 14 or 15 years of age and had lived at Dona Ana three or four years. He does not remember all the bends on the river going from Dona Ana to Santa Fe. He does not remember every camping place in which he stopped, he remembers only Valverde. He does not remember how many days he was making that journey, it was so long ago. Counsel here worries the witness a good deal about his knowledge or lack of knowledge about bends in the river between Alamitos and Dona Ana, but finally this

is accounted for by his saying that the river could not be seen at any place from the old road between Alamitos and Dona Ana. It was very far and at that time there were no watering places in that country in that direction. From Dona Ana to Alamitos it may be the distance is the same as from Alamitos to White's Ranch.

On re-direct examination he says he had testified that when he first knew Alamitos the river was running close to it and there is water there yet. The river is not running there but there is water there. The water is close to the bank there. He does not know when the river left that place. When he first knew Mesilla it was on the west side of the river and the river ran between Mesilla and Las Cruces. Mesilla is now on the other side of the old river. The river in '64 changed to the other side of Mesilla and is there yet. At this point on page 1619 Question 531 seems not to be complete, and Question 532 is omitted altogether so that it is not intelligible, but it does not seem to be important. He does not remember whether the river changed at Mesilla before or after the soldiers from Texas came. He heard that there was a ditch called the Brava which had been the cause of the change. It was said that the river cut that way and entered the ditch and formed a kind of dam there and the water cut through that side. He has testified that he knew the place now called Canutillo Nuevo and also a place called Old Canutillo. New Canutillo is higher up. He testified yesterday that after he first went to Dona Ana he made trips to Paso del Norte with his uncle and he thinks he was about 15 years old when his uncle died. Before his death he had made three or four trips from Dona Ana to Paso del Norte with him. They used to bring carts loaded with corn and beans, and going back they carried barrels of wine in the carts. His uncle cultivated a good deal of land and raised a good deal of beans. He had ten peons working for him at Dona Ana.

The wine he brought back was made here by men who were in his employ. He had large vineyards here. Sometimes he went every year and sometimes not. In Question 548 counsel tells him that he testified that there was a bend in the river ending at Tres Alamos and he has also testified that there was no bend between Alamitos and Tres Alamos and asks which is the fact, and he says there was a bend which ended at Tres Alamos near the hills. When he went to see the river a few days ago, he stopped and got off the wagon to go to the place of Canutillo where there had been the house of Salado and they were traveling the road that is next to the railroad. When they got off the wagon to go to that place they crossed the railroad. After several questions he finally says that they crossed the railroad towards the setting sun. They stopped and went to the place Duraznito and crossed the railroad track and to cross the railroad they came towards the south leaning towards the east. The wagon road opposite Duraznito on which he was traveling was on the east of the railroad and to go to Duraznito they came towards the south from the railroad. The railroad and the wagon road run south at that place. At this point follows a series of questions about the points of the compass and the railroad track and Duraznito, the answers to which seem to indicate a confusion of mind on the part of the witness. He then says that when he was there a few days ago, he saw the river running near White's Ranch and the new river strikes the railroad. It strikes the railroad all the way down from New Canutillo. It follows the railroad clean down. He remembers the place where it was said that Salado lived, and it appears that there are some indications of a house there. At that place a few days ago he saw the river there close to where the ruins of the house are. The water is running right there now. He thinks that on the west side of the river it was shorter to go to places like Amoles, Santo Tomas, Le Mesa, and Chamberino and it was shorter on the east side to go to Las Cruces

and Brazito and Dona Ana. When he went to Santa Fe he worked there for an American whose name he does not remember. He went to Santa Fe to bring timber from the mountains or lumber and brought it to the city where the man had a house. There was no saw mill there, but they brought it from the mountains, from the canon. They said that in another canon there was a saw mill. They brought logs cut with axes, 5 or 6 feet long. He does not know what the man did with it, but he had a great pile of it. Going up to Santa Fe they crossed the river at Valverde and crossed back again to the east side he thinks at a place called Ysleta which he thinks was 12 or 15 miles below Albuquerque. When he came back from Santa Fe he crossed the river at the same place. Between Alamitos and Dona Ana when he first traveled up the river the road was very far from the river. He knew a place called Ollas de Agua which was near Brazito and was a stopping place. There was another stopping place between Alamitos and Dona Ana, at Las Cruces and no others. He is asked if he went out on the ground whether he could now show where the river ran and all the different places about which he has testified between Alamitos and White's Ranch and he answers, "Yes, sir". He is then asked what is the condition of his health and says he is rather sick and suffers from the head at times; he is not suffering that way now, only at times, especially at night.

We now come to the testimony of

JESUS CUARON

which begins on page 1624 of the record.

He testifies that he lives below here, below Valverde. He was born at Paso Juarez, but he does not know in what year. His father's name was Jesus Cuaron and his mother Maria de la Lara. He did not know his father. The Apaches killed him when the witness was very little

and they killed seven with him, but he does not know who any of the others were. His father had only one brother Antonio Cuaron but he was not one of the men killed by the Apaches with his father. It was said that his father was killed at a place which they called Alto de los Cuarones, but he does not know where it is. He has lived at Paso del Norte and about here nearly all the time. When he was very small he made journeys up the river. An uncle of his mother and his father took him when he was very small to Socorro and Valverde, New Mexico, to sell dried fruit. He does not remember the name of that uncle. The witness was then about ten years old and he stayed at Socorro only eight days, after which they returned to El Paso. He remembers that he went and he remembers some places along the road including the Jornada del Muerto. They had to travel two days and one night on the jornada without water. There were very few houses at Socorro. He does not remember anyone who lived there. He was a small boy taking care of the oxen for his uncle. There were fourteen carts on that trip and most of the people were from there who had come here. When he came back from Socorro there were four carts that returned. Only one cart belonged to his uncle. They brought nothing back in their carts. He went from this side of the river through Las Cruces and Dona Ana. He remembers the fort at Brazito. There was no fort on that first trip. When he made the first trip there was no fort, nor any Dona Ana, nor any settlement at Las Cruces. After that first trip it was more than 20 years before they made another. He does not remember how old he was at that time, but he was grown up. He was not married at that time, even when he enlisted as a soldier he was a single man. He does not remember how old he was when he enlisted as a soldier. He saw the fort at Brazito when he went to take flour from a mill which was here at the stone house. He took the flour to the fort in carts and

delivered it to the commanding officer. He was going with his uncle helping him to attend to the carts. They went three times to take flour to the fort and traveled always on this side, and made one trip each week. That was more than 14 years before he enlisted as a soldier. The fort was then new, it was just commenced. He does not remember the name of that fort. He knew Fort Craig and Fort Valverde well afterwards. He does not remember when the town of Dona Ana was first settled, nor how old he was when he first saw Dona Ana, but he was a man already. He had never been at Dona Ana before he went with his uncle freighting the flour. He does not remember when they dug the acequia at Dona Ana. He did not work on that acequia, but he worked on it to help clean it, it had already been dug. He does not remember when that was. He saw Dona Ana when he went as a soldier to Valverde. He helped to clean the ditch long before he went to be a soldier. Dona Ana at that time was a new town but he does not know how old he was although he was a man already. He does not remember when Mesilla was first settled. When he helped to clean the acequia he thinks it was about six years old. He went there for a visit with a friend who had uncles there. It was long after he helped to freight the flour to the fort. They used to leave the mill here and there were a good many high hills and stayed at White's Ranch and from there they used to go to Alamitos and then to Temascalitos and from there to the fort at Brazito. The first time he went up the river there was nothing at White's Ranch and even at the time he was taking flour to the fort there was nothing but the hills. The house was there afterwards and everybody called it White's house. He did not know White himself. The Indians made the people run away from there and leave the house alone there and it was abandoned. The people did not come back to the house after that. When he first saw that part of the country, the river ran right there close to the bank near where the

house was afterwards built. He has recently seen that place again. There are now some little jacales on the other side of the railroad track, but at the place where White's house was there are only the ruins of the adobes there, but it can be seen where the house had been. He did not see any monument at or near that house. He became acquainted with a place called Duraznito and he ate three peaches from the peach tree which was about half a mile from the river. The ruin of the river is there yet where it was. There is no peach tree there now. At that time there was a bosque of tornillo, very thick, on the other side of the river. When he went there the other day he did not go to where the peach tree had been. He went on a visit to Las Cruces. The witness is then asked to look out of the window and point to some object about as far as the little peach tree was from the river, and after several attempts, he points at a certain smoke stack, and counsel agreed that the distance indicated by him is about 1,300 feet, more or less. On those early trips he became acquainted with a place called Canutillo. Nobody lived at that place. There was nothing there but bosque. The river was there at the edge of the place. When he came back from Santa Fe after having been a soldier that place was settled and there were some cattle around there then. There was a cowboy called Simon who worked for Don Juan Olguin who lived below here at Socorro. He became acquainted with Alamitos where there were little trees and bosque, little alamos, the river was about fifteen steps from that place. The bosque was on the other side of the river. From Alamitos down the river ran at the edge of the bosque which was on the other side of the river. Below Alamitos it formed a small bend. He has seen the place now called Anthony and Alamitos was above Anthony. The bend of which he spoke was near the place called Anthony. It was a short bend, it went that way (pointing west and south) and then it turned

back. It started towards the setting sun and came back towards the sun rise and came to a place where the railroad is now. He does not know that that place had any name. He did not know what was called Alto de la Breja but he has seen the place called Vinton. Below the bend which he described there was no other bend in the river that he remembers, but the river ran straight and passed near White's house and ran near the hills. Between Alamitos and White's house the wagon road went over the hills because in those years there was a good deal of water in the river and it would overflow and fill all the places to the foot-hills. He has recently seen a place called New Canutillo near which there is a bridge. At the place now called New Canutillo the river, when he knew that place on his early trips, ran right near where it is now. The river does not run near Alamitos now. There are some alfalfa fields there now. When he recently visited the place called Vinton he did not see the river as it runs now from that place. There is a bridge near Vinton somewhere and the river is near where the bridge is. He saw the river near Vinton and saw it at the bridge. There are houses near the bridge. At the place where the brick kilns are he could not see the present river. He cannot see very far now and he can hardly see now. The house of which he spoke is at New Canutillo. From New Canutillo down to White's Ranch the river formerly ran near the hills on this side. He did not know Juan Jose Cumplido. There was only one road on the east side of the river going north. He says the Piedras de Amolar are beyond White's house towards the other side of the river and the Piedras Paradas are also on the other side of the river. He then says he is not sure whether the Piedras de Amolar are on this side or on the other side. He knows the Piedras Paradas are on the other side. He did not travel on the west side of the river when he was young. He does not remember the Arroyo de Artesa and

he did not know of a beaver dam in the river. He enlisted as a soldier at Fort Craig on the other side of Paraje, above the jornada. He was already a soldier before the battle of Valverde. He was at the battle but they did not fight there. He says there was nothing of the fight at Valverde, the Texans were on one side and they were on the other side of the fort. The Texans went up and they remained there and they did not fight. He was a soldier two years and six months. When the Texans came back from the north he was a soldier. When the Texans went up here he was working at Las Cruces. The mayordomo of the train was called Pete and he sent them with the wagons up to Fort Valverde and the Texans had gone in. He saw them when they came back and has said that they (we) were at the fort then. He was discharged at Fort Union, north of Las Vegas. They were at Fort Union and at Santa Fe and at Fort Sumner and they sent for them to go to Fort Union again and gave them their discharge at Fort Union. Captain Lowrey was the captain of his company, and the colonel was Abreu, the major was Quintana. He never took part in any fight with the Texans. The road he traveled in his early trips on this side of the river was on the hills all the time. There was very large bosque between White's Ranch and Alamitos on the other side of the river, all of it, there were no trees or growth on the east side of the river.

On cross-examination he is asked if he enlisted to fight the Indians or to fight the Texans, and he answers, that they did not tell them whom they were going to fight. He does not remember the battle of Mesilla, nor the name of General Baylor, nor the name of Sibley, and he never heard of the battle of Mesilla. He does not remember how long after the battle of Valverde it was before he became a soldier. He now lives right here at Valverde, a little below Valverde. He has lived all the time at Caleros with his brother. At this point counsel for Texas asks where is

Caleros and the interpreter Flores says it is a little below Valverde where the road bends, about six miles from here. He has been living three years at Caleros and before he went there he lived in Juarez. Counsel asks him if he has lived all his life in El Paso and Paso del Norte until he went to Caleros, and he says that since his wife died he has been traveling all around for fifteen years, or stopping around where his children live. He never lived at Ysleta. He does not remember the Mexican war, nor when Doniphan came with the United States soldiers, nor when soldiers came from the north and camped in Paso del Norte. He does not remember when Santiago Magoffin first came to the country, but he knew him when he was building this fort here down below and he was about 40 or 50 years of age when Magoffin built that fort. He never heard of the battle of Temascalitos. He thinks he is about 100 years old, but he is not certain. He has not been able to find his baptismal record. He was baptized here at El Paso. The priest said the books were burned up. He is then asked if he remembers who baptized him, and he says he does not remember, and asks how can he know when he was so small when he was baptized. Counsel then says that he thought that perhaps his parents or somebody had told him, but he says, they did not have that precaution then. What they did at that time was when a fellow was about that size (indicating about three feet) they put him to work. They never had any schools at that time. When he was a boy people were engaged in tilling the soil and had crops of peas and beans and fruit and peaches and plenty of wine, while now they do not do anything of the kind. When he found the peaches on the tree at Duraznito, he was a grown up man already and thinks he was more than 30 years old. That was after Magoffin started to build his fort. He and another man went there and saw the peach tree full of peaches and started into eat them. They called it Duraznito because it was a little tree, about that thick

(indicating six to eight inches). That tree was not in the hills it was in the vega near the monte, near the road in the monte. There was no other road. That road came down to the water's edge from the road to the river where they gave water. They only came down to the river to give water. The peach tree from the main road was about 20 varas and about 40 yards from the edge of the hills. He did not know Price Cooper. He was at the place called Piedras Paradas many years ago. He was already a grown up man. He went there to look after the animals that they had there loose, cows that they had there. He went from the other side of the river by the road which starts from the dam and went through Canoncitos as he went down the valley. From the tops of the hills you could see the river plainly. He was traveling all along the edge of the hills. The river was quite a distance from the foot of Piedras Paradas, this side of the Piedras Paradas, running towards White's house. He stopped there by Piedras Paradas this side of Santa Teresa. He knew where Santa Teresa was. He has not been at the Corral de Tapia nor at the Corral de Trosas. He is asked what other trips he made besides those he made up the river, and he says they are those he has already mentioned when he went to and from Brazito and did not make any more trips when he was a young man. The doctor at Fort Pana the other side of Nepeste taught him the use of tobacco. He was one of the escorts that went with a train to bring provisions to Fort Union. The fort was on the other side of the Nepeste river; and he is then asked if that was Bent's Fort, and he says he only heard the name of Pana. (It might be said here that Nepeste, or Napeste, is the Indian name for the Arkansas river.) He thinks the soldiers from Missouri had already come down because there were then many soldiers. The Comanches were taking trains on the road and for that reason they sent an escort to protect them. When he first made trips up the river

there were many war-like Indians in the country. They were using wooden-wheeled carts and traveled during the day and stopped during the night. He never traveled at night time to avoid the Indians. He is a Mexican. He used to follow all the time the main road. He learned as much about the valley above Alamitos as he did below Alamitos. He used to look at the ground and at the country but was not specially doing that business and examining things specially. Below Alamitos and White's Ranch he knew where the bends were and he paid more attention to the river below Alamitos than he did above because the road they traveled was nearer to the river. Above Alamitos from the main road you could see the river. On the sunrise side of the river above Alamitos, in those days, there were only tornillo woods. At the widest place between Alamitos and Brazito from the road to the river was about two miles. Between Alamitos and Brazito he did not know all of the bends in the river and knew one only which was in front of where the fort was; they used to call the town Santo Tomas. At Brazito the river ran in only one branch. He knew of no place above Alamitos where the river ran in two branches. Above Alamitos and towards Brazito the river made a bend as he said before, towards Santo Tomas, and that was the only bend between those points. Between Alamitos and White's Ranch, when he first knew the river there were four bends. One of the bends was below the peach tree. There were two bends between Duraznito and White's Ranch. The bend that started from Brazito was the largest one. At Duraznito the river made a small bend there. It went that way and then it turned back this way (indicating to the west and then to the east), and then the river did not make any more bends. He did not know, in those early days, an old river channel along the edge of the foot hills where Canutillo was afterwards built and he never saw that old river-bed. He did not know an island below Alamitos, nor the Island of Jose Maria Garcia.

He did not know any place below Alamitos where the river divided into two branches. Between Alamitos and Old Canutillo there was only one bend in the river. He does not remember if it was below or above where the brick kilns now are. Everything has changed a good deal now all over the land. Every bit of the land now seems to have been cleared. He is asked in Question 297, if he remembers from his own recollection anything that he knew when he was a young man, about the river, and he says, he does not remember except what he is telling of, what he saw. He has been reminded by no one of the things said to exist when he was young, and no one has talked to him about this case. On Tuesday Don Eugenio talked to him about the case and no one else. Mr. Reber was with Mr. Van Patten at the same time. Mr. Amado Chaves has been with him since that day he told about. They asked him how old he was and he told them that he was 100 years old. Then they asked him if he knew where the old river used to be and he said, yes, that he knew. Then they told him that they wanted him and would pay him two dollars for his services here. This talk took place on San Antonio Street, on the corner somewhere there where they stopped him and talked to him about it. The witness was stopped there and this man (indicating Amado Chaves) and this gentleman here (indicating Mr. Reber) asked him how old he was. They saw him standing there and stopped him and asked him about it. That was the first time anybody had ever mentioned the old river to him. He went with Mr. Van Patten to show the river to him on Wednesday of this week and he has not been with anybody else. No one reminded him of a place called Tres Alamos. He knows all those places himself very well, as well as anybody. There are houses now which have been built lately, which were not there before. He first heard of Tres Alamos, many, many years ago. They used to stop there. La Bruja he did not know. He does not know where La Bruja is. He first knew Old

Canutillo when they were freighting flour to that fort. He never heard of Santiago Magoffin clearing some land near where Canutillo is, and he does not know when someone dug an irrigation ditch near Old Canutillo. He did not go to Amoles. He knew it was in front or opposite Alamitos. They said Amoles was there. He never crossed the river there. The river ran there on this side at Alamitos, where they used to stop with the oxen. They stopped about 25 varas from the edge of the river where they used to go to give water at Alamitos. They never stopped at Tres Alamos at any time. Being asked what was Tres Alamos, he says, three cottonwoods that were there together, and he thinks they called that Tres Alamos. They were large trees. He does not know what became of them. There is one there now, a little one, and a willow tree. The last trip he made up there the river had not made any changes between Alamitos and White's Ranch from where he first knew it. That was many years ago. After he was a soldier he came down and the river had made no changes yet, it was the same then. He did not see any changes that the river had made. One year after he ceased to be a soldier he came from Santa Fe and the river had not changed yet. He does not know when they surveyed the river. He never heard of it. He never heard of a man named Salazar who was a surveyor, and never knew anything about any persons surveying the river for the United States and Mexico, and he never saw any soldiers camped up and down the river from Ysleta to Alamitos and to Dona Ana protecting the surveyors who were surveying the river. He did not see any soldiers camped between White's Ranch and Brazito when he came back, he just went to Chihuahua. When he was discharged as a soldier he stayed at Chihuahua three years. Before he was a soldier he was working. After he was a soldier he did not go back there up the river any more. Before he was a soldier he did not go anywhere except

up the river to Brazitos Fort. Before he was a soldier he used to see the river frequently above White's Ranch. At all those trips which he made he used to see the river. He made but three trips to the fort. Before he was a soldier he was working at Las Cruces at the corral. Some people got drunk, some of the teamsters got drunk and his foreman sent him as substitute with the wagons up the country. The wagons came from the direction of Santa Fe and came here with some freight and he went with those teams to Valverde and there he enlisted as a soldier together with Gregorio Barela who bought a gallon of whiskey and made four of them drunk and he is the one who made them enlist as soldiers while they were drunk. The next morning when he wanted to get up to feed his mules he could not get up and did not know where he was. Then they went back to their camp and fed the mules and watered them and about noon some of the guardsmen came and took them to the fort. The sergeant had a list and called his name from the list and asked him how much wages he was going to get now, and he said he thought the same as before, sixty dollars a month; then the sergeant said, no, that he was going to get from this one only $18 a month and he told them that they were soldiers and took them to the commissary store and gave them some clothes. He got a pension afterwards and still gets it. He thinks it was after the battle of Valverde when he enlisted because he never saw any battle himself. He saw the soldiers coming this way. And being asked why they did not capture those Texas soldiers, he answers, it may be the commanding officer did not want to do it. (It is a historical fact that after the defeat of the Texans the commander of the Federal troops made no effort to capture them but allowed them to get out of the country, because if they had been made prisoners it would have been necessary to feed them and provisions were scarce.) He knew the San Agustin Pass in the mountains from the road, but he does not know

when the Texas soldiers captured some northern soldiers at that pass. The other day in showing the river he was only one day. They went as far up as Alamitos and began to show the river from White's house. He started to show them where the old road used to be. The ruins of the old house are there. He saw the house when it was standing. The ruins are there of the walls that fell down and there are now somewhere near the house some little jacales. The old house of White was on the edge of the hills near the railroad track, in the heights, to the east of the railroad. The site of the old house was about 8 or 10 varas from the present wagon road. From White's house to Alamitos the river could be seen well enough as the road was on the hills. Near Duraznito you could see it and at another place where there is a new large house lately built you could see the river at that place from the heights. Being asked at what other place he could see the river, he says, from Canutillo up and it would be seen where it was running near. He has named all the places at which he could see the river from the road, where the old river used to run. In Question 385, he is asked, what was the greatest distance at any place of the old road from the river, between White's Ranch and Alamitos, and he answers that from White's house it was about 20 yards and when he saw the river running there it was the largest distance. In Question 387, counsel tries to make him say that the distance from the road at White's house was the longest distance at any place between the river and the road between White's Ranch and Alamitos, and he answers, "Yes, sir", but in answer to the next question, he says, from White's house, yes, about 20 yards. He never knew a man named Salado and he did not see a house at Old Canutillo. There was no house there when he went up there, there was no house up there. Long after his first trip as a boy they built a house at White's Ranch. On his second trip there was no house there then. There was a house there before

he enlisted as a soldier. He first saw the house at White's Ranch the three trips that they made once a week. When they were hauling flour there, there was a house at White's Ranch. In Question 398, counsel asks him, "Then you were mistaken when you said there was no house there during any of those three trips?" The record does not show that he had said anything of that kind, but with the politeness characteristic of Mexicans, he answers, that he must have made a mistake because there was a house there already. It was built of adobes and it had two rooms. At that time the Indians had not run the people away, but afterwards they ran White away from there as he knows because the house was left alone. It was during those three trips that they made each week that he discovered the house was left alone. When he made the first trip the house was there already and it was not a new house, perhaps it had been built three years before. When he made the last one of those trips the people lived there. He does not know what year it was that they drove the people away. After those three trips he did not go any more until he made his first trip to Las Cruces when he went there to work. Between the three trips and the trip when he went to get work was about ten years. When he made the first of the three trips the flour was for the fort at Brazito. The fort was already there and the soldiers were there. Las Cruces was already a town and the government had a corral there and there were soldiers there also. The name of the foreman they had there was Pete, he was an American. From the tenor of this answer, it seems that the witness is confusing the time when he freighted the flour to Brazito and when he went to Las Cruces to get work where he had a foreman. He does not remember when the stage coaches first started to run up the valley. He did not know Mr. Van Patten when he had something to do with the stage coaches and he never saw any stage coaches. When he was a young man, he went to Dona

Ana to work on a ditch. Brazito was below Las Cruces. He saw Las Cruces when he was hauling the flour to the store, to the fort. He went to Las Cruces about ten years afterwards and was working for about two months at the corral at Las Cruces and they then sent him up above and he became a soldier. He does not know how old he was when he enlisted. In showing the river the other day he traveled in an automobile. That was the first time he ever rode in one and it went fast. In that automobile there were Don Eugenio, the driver, and another man. He does not know the name of the man. He is then asked to turn around and look at the gentleman behind him, and he says he is the man. Counsel then asks how did he happen to overlook him, and he says, he did not know his name. Everyone of those fellows look the same to him. He does not see very well, he can hardly see now. When he went to show the river he knew where the old road was, where they used to freight, and he knew where the river used to run and could show it very well. He went to Alamitos with Mr. Reber and the other gentlemen, to show him where he knew they were. There was no other witness but himself. Mr. Van Patten did not know anything about the old river. The automobile stayed where the houses are and then they walked from there. They walked along the farms and he went himself to show them where it was. There are quite a lot of alfalfa fields there now and he showed them the signs of where the old river used to run and told them, "Here it ran". Mr. Van Patten walked along with him. Mr. Austin remained at the buggy, he and the other men. Immediately afterwards he says that Mr. Austin went with him to Alamitos. The surveyor did not go with him to Alamitos. There is a cottonwood and a willow there. When he first went up the river the trees were there, there were several trees scattered along. There was valley land on the east side of the river from that place up. There were no hills near that cottonwood tree.

The river when he first knew it always turned to the east, always to this side. The railroad is placed now at some places where the old river used to run, at this side of Duraznito about a mile, he thinks. At Duraznito you cannot see the present river. He knew when he reached Old Canutillo the other day because he knew very well where Canutillo was, judging by the surrounding country. When he saw it as a young man there was nothing there, monte only. When he went on that trip during which they caught him as a soldier, there was only one house at Old Canutillo; and being asked who lived in it, he answered, they said Chapo Reyes, but he did not know Chapo Reyes. They said he lived at Canutillo. He did not know a man then by the name of Cumplido, nor one by the name of Gualdarama, nor one by the name of Uranga. When he went on that trip during which he enlisted as a soldier, the only house then was White's house; at Alamitos then there was no house. There was no house at Alamitos when he enlisted as a soldier. Between White's house and Alamitos the only other house was the one at Canutillo and they said that Chapo Reyes lived there. He never heard of a man named Scott at Alamitos, nor a man named Jackson at Alamitos. He remembers now about that mail post at Alamitos, the manure of the corral is still there. He never saw the mail post himself, but a friend told him about that post when he was living at Casas Grandes, where he lived 7 years. After he was a soldier he went there to get married. When he went to be a soldier there was no house at Alamitos and he did not see any post there. When he went to be a soldier they passed there at night. They were walking along the railroad and just passed by at night. They traveled at night on account of the Indians. Only four of them were walking and those four were the ones that became soldiers at the same time. They started from Paso del Norte very early in the morning and did not stop anywhere but kept walking all day and all night.

They arrived at Alamitos about dark that day. It was raining when they passed there. They did not stop there, it was dark when they arrived there. Night overtook them this side of Canutillo. They left Paso del Norte early in the morning but stopped quite a long while this side of the smelter and some of his companions wanted to return. They stopped there until after midday. Before they got to Canutillo it was night already, it was raining. They traveled all night and at the dawn of the morning they got near Ollas de Agua near Brazito. The Ollas de Agua was quite far from the river and the river could not be seen from there. After he left Alamitos the other day the first place he showed the river again was at Old Canutillo. They did not stop at any place between Anthony and New Canutillo. When they got to New Canutillo they went into the restaurant and had something to eat but nothing to drink. Mr. Reber was along. He gave the witness a cigar. Mr. Reber and Don Eugenio went with him to New Canutillo and there he went to show them where the old river used to run. The old river is there. Where the river used to run before is all covered with alfalfa fields. The alfalfa field at New Canutillo is very large and extends from New Canutillo to the east. At New Canutillo everything is cleared there up to where the houses are. He then says that the alfalfa field at New Canutillo is to the side where the sun sets and the old river used to run there. He does not know where it is running now. He could not see it at New Canutillo. After they had their dinner they did not stop at any other places. Being asked in Question 519, if he showed them the old river from the automobile, he says they got off the machine and walked to the places that he wanted to show them. Counsel then tells him that he said they did not get off any place after they left New Canutillo, and he answers not coming this way from Alamitos. This way they did not stop anywhere, but when they went up from here then they stopped at those places that he showed them.

Going up the first place that they stopped was at White's Ranch and the next place Duraznito. In Question 523, counsel asks him how he was able to find Duraznito after the railroad was built and the wagon road has been built; and he answers, how could he find the tree when it must be dead long ago and not even the roots are there yet. It is clear that as the question was translated to him Duraznito meant the little peach tree and not the name of the place. He says he remembers very well the distance and the directions where Duraznito was. He did not take them to the very spot where the roots of the tree might be, but to where the river used to run there. He was quite grown when he first knew the tree. Before he made the trips to take flour to Brazito, he knew the tree. He used to go up to Muleros to herd and take care of the oxen. Duraznito was above Muleros. The cattle were on this side of the river. He herded the cattle this side of Duraznito, but he was hunting the cattle and used to go all around those places on horseback. He had seen the peach tree long before the trips he made with the flour, but he cannot state the number of years. They did not water the stock at Duraznito, nowhere in that neighborhood. The fruit of the peach tree he ate himself as he was looking for the oxen. There were tornillos about that thick (indicating about 12 to 18 inches). The peach tree was in the bosque. The oxen used to graze in that tornillo thicket. On this side of the river the tornillo thicket was very large, you could hardly walk through it. There was also a red willow and you had to open the road for your horse to go through. On this side of the river there was only monte and tornillo. The bosque he referred to was on the other side of the river. There was some tornillo on the east side of the river, very few, and there was some mesquite brush too. Being asked in Question 542, how far the tornillo and the mesquite extended below and above Duraznito he says it was very narrow, it was very little that which was on this side of the river.

When he found the peaches on the tree White's house was already built. He has been in Chihuahua. He went there many years ago when President Diaz first became president, but has not been there since. He went in wagons. There was no railroad then. It was 6 or 7 years before the railroad came. He does not remember what his age was. Counsel then in Question 549 asks him through what places he went traveling to Chihuahua and he gives the names of the places as follows: Samalayuca, Ojo de Lucero, Villa Ahumada, El Gallego, Lagua, Encinoillas, El Sauz, Torreon, and Chihuahua. Torreon he thinks is three leagues from Chihuahua. He went by the Medanos road not by Guadalupe and did not go by Casas Grandes. Having said that he did not go that way, counsel then asks him in Question 553, "When you went to Casas Grandes that time, did you go to any place beyond there?" The witness answers, "No, sir". He then says that when he made his first trip up the river as a boy, he went to Socorro, and being asked what other places did he go to reach Socorro, he says by Fort Valverde, Paraje, Jornada del Muerto, and then Socorro, and from there he came back by the same road. There was a regular wagon road up to Socorro. He does remember about that first trip. He is then asked if there was any settlement between Paso del Norte and Socorro except Fort Valverde, and he says there was a little town on the other side of the river called La Mesa. It is to be noted, however, that he had given the name of a place called Paraje. On that first trip when they crossed the Jornada del Muerto they traveled at night. There was no water, it was too far for the animals to travel. He made his first trip with the flour when the Brazito Fort was already there and that was when he first went. There was nothing between Paso del Norte and Brazito. He made the three trips in three weeks and the next trip was when he went to work at Las Cruces and he was working at the government corral at Las Cruces and there were soldiers there,

but he enlisted long afterwards. After he left Paso del Norte going to Las Cruces, it was 10 or 12 years before he went into the army. He worked on the ditch at Dona Ana after he took the flour to Brazito. He is then asked in Question 576, if he ever made but one more trip up the river after the last trip with the flour until he became a soldier, and he says that he did, that he had to leave Paso del Norte, four of them because they beat up a man at the baile and they had to leave and went up and then it was that he got work at the Las Cruces corral. He came back to Paso del Norte when he was discharged and not before. When he went up after beating the man at the baile there were no settlements on the east side of the river between Paso del Norte and Las Cruces. There was a house at White's Ranch but he did not see any one there. There was nothing at Old Canutillo, nor at Alamitos, no cattle were there. The only place they kept cattle was at Muleros. After the night he beat up the man he was gone five years until he came back after he was discharged as a soldier and two and a half years of that time he was in the army. Counsel then in Question 586 asks what he did the other two and a half years, and he says, that he was at Santa Fe at Tecolote, at Las Vegas, at Loma Parda, at Golondrinas, at Mora and then he went back to Santa Fe and from there he came here. He has never been in Arizona, nor down the river towards Presidio del Norte. The only trips he made into Mexico were at Chihuahua and Casas Grandes and at Casas Grandes he got married. He lived at Casas Grandes more than twelve years, that was after he was a soldier. He does not remember how old he was when he married. When he came back from Casas Grandes the railroad had been built while he was at Casas Grandes and perhaps before he went there. He indicates, however, that the railroad was not running here before he went to Casas Grandes. When he came back from there the railroad that goes to Chihuahua was already built and after that

they began to build the railroad at Casas Grandes. He does not know whether the Santa Fe railroad which runs to Las Cruces was built before or after he went to Casas Grandes. He was not here when that railroad was built. The last railroad built was the Casas Grandes. It is not completed yet, it is running from here to Chihuahua. When he went to Casas Grandes there was quite a town on this side of the river opposite Paso del Norte. When he went up to Las Cruces to work there was a town or settlement where this place now is. There were houses here. Fort Magoffin was already built. There were two stores. He does not know the names of the owners. He did not know a man by the name of Ponce, but he was informed that his ranch was here, that he had a vineyard here. He did not cross the river on a ferry here nor by a ford between here and the old church. He crossed the river down below opposite Concordia. There were several fords. Hart's Mill was in that direction (pointing westward) where the dam is. When he made his trip to Las Cruces there were no troops then, they were building the fort, referring to Magoffin's Fort. He does not think there were any troops at Socorro, but he does not know. He does not remember when the first United States troops that he remembers of came here. When the four whipped the man at the baile they left Paso del Norte to go to Las Cruces in the morning. Some of the men wanted to come back whether they were put in jail or not. They had only one pistol and another man had a flint gun. At last they all went on to Las Cruces. That was the time when they walked in the rain. Being asked at what places they stopped for water, he says that they did not want any water that night, but they had a gourd with water with them. They passed White's house on the road but they did not go to Duraznito. They traveled along the road by those places. The road at Old Canutillo from the place they now point out as being Salado's house was near, 40 or 50 yards, more or less. At Tres Alamos the

road passed very near the cottonwoods. At that time there was no New Canutillo.. He first had New Canutillo pointed out to him on the trip that he made lately to Las Cruces in a wagon. That was sometime last month. He met some people on the road from La Union and he asked them and they told him about the place New Canutillo. When he was young he knew that place and he knew all the places up above. He remembers well that the road passed by those places. He does not remember a spring anywhere and never heard of a spring at Old Canutillo. He first heard the name of Canutillo when they went to take care of or look after the cattle. The old people at that time called that place Canutillo. He himself had lost two of the oxen and he asked Juan Archuleta, who is dead now, and he told him they were at the bend of Canutillo. That bend went that way (pointing westward) and then turned this way (pointing eastward). It did go through the bosque. It was small bend. There were four bends between Alamitos and White's Ranch. New Canutillo is below Old Canutillo. Tres Alamos is above the Estero of Sanguijuelas. New Canutillo is above that estero. He does not remember whether one of those four bends was between Old Canutillo and Duraznito. Duraznito was below Old Canutillo. Being asked if Alamitos is near to or far from where Anthony now is, he answers, "It is the same distance". He is then asked how far it was from the cottonwood tree at Alamitos to the town of Anthony and he says, "About 20 yards". It is difficult to understand how he became confused about this unless there was some error in translation, because all of the other witnesses show that Alamitos was a considerable distance north of the town of Anthony as is shown on the map which is attached to the bill of complaint and is indexed in the record as complainant's Exhibit No. 19, at page 3118 of the record but it is not to be found at that place; but it appears on the next page of the record, page 1663, that the witness was tired and

wanted to rest and some of his answers on page 1662 seem to indicate a confusion of mind. He says that the river ran straight from Alamitos to Tres Alamos, when he first knew it with the exception of those short bends and that the bend between Alamitos and Tres Alamos was about 200 varas long and the next one was about 30 yards or varas where it made the bend, and the next bend was about 40 varas and the fourth one was about 27 varas. It seems certain that he didn't know what he was talking about but was trying to make answers to the questions although his memory was at fault.

On re-direct examination, after having rested a while the witness says that when he was married he was an old man. He has no recollection of hearing of the battle of Temascalitos and he does not remember when they raised the flag at Mesilla, but he heard about it. That was after he freighted the flour to the fort at Brazito. Before that he had been at Dona Ana only one time before he took the flour to the fort and that was the same time when he helped do some work on the acequia. When he first knew Mesilla it was on the other side of the river, but it is now on this side. He does not remember when the river changed there, but it had already changed before he enlisted as a soldier. When he went to Las Cruces and worked at the corral the river was not still running between Las Cruces and Mesilla. He and Gregorio Barela did not enlist at the same time. Barela was a soldier already and was the man who bought the whiskey and got the four of them drunk and all four of them enlisted. Barela was from Juarez. He never lived up near Albuquerque. When he came back from being a soldier he did not travel any between here and Alamitos. After he came back here he did not travel up and down the river. When he came back he came by way of Dona Ana. He saw Alamitos at that time and the river was running there yet. It is not running there now. La Mesa

which he spoke about this morning was opposite Valverde. He does not know a surveyor named Steen. When he went recently up the river he does not know which was the surveyor, three went with him, five with himself. Mr. Reber was with him, there was another one also and Don Eugenio. Yesterday he saw a large man who was sitting behind him when he was testifying and he was one of the men that went up the river with him. He does not remember all the names of those who went with him. Mr. Reber, Eugenio Van Patten and the driver whose name he does not know, and he does not remember more names. He did not hear the name of Steen or Austin. After the trouble at the baile at Paso del Norte the men who went with him were Valentin Gomez, Asencion Salazar, and Martin Medina. Going up the river recently they were stopping right along, going up, but coming back they traveled fast. He was able to see and point out on the ground the places where the river ran when he was young. In Question 710 he was asked, what is an island, as he had been asked yesterday something about an island, and he says, it is a big bosque where the river forms a big bend. And being asked what formed that island, he says it was a large rincon and for that reason was called an island. He does not know what this case is about, nor who are the parties in the case. When he was taking the flour to the fort, Las Cruces was settled but on neither of those trips taking the flour did he go to Las Cruces. He had been to Las Cruces before the time he took the flour but only one time. When he first knew the town of Mesilla it belonged to Mexico. He believes it belongs to the United States now. Being asked if he knows how it got changed from Mexico to the United States he says he supposes because the river cut above it. He did know Santiago Magoffin and his son Jose who was grown up when he first knew him and that was before he became a soldier. He is then asked in Question 726 if Jose was at that time a young man or an old man, and he answers,

"Yes, he was". He lived below here and the witness was certainly older than he. He thinks he was 20 when he first knew Jose as a young man and Jose was about 12 years old at that time, he was small. When he went up the river a few days ago he saw a place which is now called New Canutillo and a bridge close to there and the water is running there at the bridge near New Canutillo.

The next testimony in the record is that of A. M. Randolph, a surveyor, which, like that of Mr. Owen can be better considered later in this brief in connection with testimony about the Clark survey, and we will next consider the testimony of

VALENTIN ABALOS

which begins at page 1699 of the record.

He says that he lives at Chamberino and was born in El Paso, Juarez, where he lived until the dam was washed away and at that time he was an old man already and he adds, "It is not so long since the dam was washed away". There is some evidence in the record that the dam was washed away in 1864. When he left Paso del Norte he went to Chamberino and has lived there ever since. Before he went up there to live he had made many trips to that part of the country. The first time he was about 7 or 8 years old and went to bring his father from Dona Ana. He was sick. His brother Enrique went with him. His father was one of the settlers of Dona Ana and when he got sick he sent word and they went to bring him home. His brother Enrique was the eldest of all the family and there were seven brothers. The witness was the youngest of the seven. He does not know how soon after Dona Ana was settled that his father got sick and they went after him. His father had been gone a long time and his mother

was with the family at Juarez. When they went for his father he did not wish to come back then and said he was going to sell all he had there to prepare for returning home, but in the meantime he died. When he went to Dona Ana for the first time there were only a few scattered houses there. His father's name was Perfecto Abalos and his mother Josefa Sanchez. The witness was told that he was born in 1835. Going to Dona Ana he traveled on this side of the river and about eight years afterwards they made more trips. After that they began to bring corn and beans down here from Las Cruces and Mesilla. He remembers when Mesilla was first settled. He saw Mesilla five or six years after it was settled. When he went there the first time there was no flag there, but on the second trip the flag was already on the tree. He went there one year and when he went the following year the flag was already there. Before he went to Mesilla he had not made any other trips up the river. He does not know how old he was when he made that first trip to Mesilla but he was quite grown up. When he went to Mesilla he traveled on the other side of the river and went there to bring corn and beans. That is a better country up there to raise corn and beans than here at Paso del Norte. There was very little of that kind of things raised here. The people here had mainly orchards and vineyards and little patches of wheat. There were so many people here then that the demand was greater than the supply. They used to cut wood this side of the town now called La Mesa. Being asked how many times he went with wood cutting parties, he answers, all the time since he was 15 years of age until the dam of El Paso was washed away. Those parties cut the wood on the other side of the river. There was hardly anything on this side. They used to cut the wood in the winter so it would get dry and in the summer, in the month of August they used to go and bring it down on the river. They went after the wood in August because

there was not so much water then and the water was warm so they could stand it when they were naked. They cut the wood above; this side of Chamberino and always hunted for a place near the river so as to bring the wood to the water. Being asked how near to the place called Chamberino he went to cut wood, he answers, the river was quite a distance towards the station, the one that Don Guillermo had. There was a large house there. It was a ranch and afterwards it was the post and the station there, it was called the station. There were some Americans living there, one of them was Don Jose Jackie and the witness thinks he was the brother-in-law of Gregorio Garcia and he is blind at Las Cruces now. That station was the one where the railroad is now, on this side. They used to cut wood all along there and in front of Piedras Paradas. The stretch of country east of Piedras Paradas they called Muleros. After the wood was cut and dried they used to bring it to the edge of the river. They used to put a long log at the edge of the bank and the wood would be put across on the log from one end to the other and another log farther along and the wood was put across and tied with some rawhide string at both ends to keep it together and then four men would push against that log and it would drop into the water like a sarzo—like a frame. They would drop one of those frames and then another and tie it to that one and then another one and tie it also. One man used to take three cart loads. A man would go naked because there were obstructions in the river from which he had to push the rafts away. One man used to take three rafts. Being asked in Question 68, if he never cut wood on the east side of the river, he says there was no bosque there. There were tornillo and willow and a few cottonwoods. Tornillo is a good wood for fuel but they could not take it because it was short and crooked and they could not make it into rafts. He does not remember what year it was when the dam was washed away, nor when the

soldiers from Texas came through here. He heard that there had been a battle at Mesilla and that they had changed the laws. He heard that some Americans had come there and a man who was supposed to be a judge sent his son to close the court house and the boy was killed. He thinks the name was Pablo Duran. When he heard about the battle at Mesilla he was living at El Paso, but he does not know how long after that time it was that the dam was washed away, but it was some years. The dam was washed away by a big flood in the river. After that time he did not see a flood as large, but before, yes. They stopped going up the river for wood because they could no longer tie the rafts at the dam when the dam was washed away and the water was running very swiftly and they could not tie their rafts there to anything. At the dam was the place where they took the wood out of the river. He knew a man named Ben Dowell and he told them that the land below Corral de Tapia belonged to him and he did not want anyone to cut wood there. He said that all the land below Corral de Tapia on both sides belonged to him. The witness cut wood above the Corral de Tapia and Dowell did not prohibit their cutting wood up there. After Dowell told them not to cut wood below Corral de Tapia they cut wood above and continued the cutting until the dam was washed away. When he first knew Mesilla it was on the other side of the river and it is now on this side. He does not remember when the river changed at Mesilla, but it was before the dam was washed away. He does not know how long before. The reason he went away from Paso del Norte was because after the dam was washed away they had no way to irrigate anything and it was then that he went to Chamberino and from that time to the present he has always lived there. He knew a man named Scott and worked for him three years and a few months at his house a little this side of Alamitos. He worked for Scott digging a ditch. Scott wanted to cultivate land.

He planted some and even some grape vines but the river overflowed there and carried everything away. The witness was one of the men who dug an acequia from above Alamitos down to or below that place. Pepe de Camara who was killed at Chamberino was in charge of the work. Scott's ditch was a little above that one. This was a little below Scott's ditch. There was a sandy hill there covered with brush and the river overflowed there. There were 16 or 18 of them that dug that ditch and it was taken out before Scott's ditch. They wanted to irrigate lands at a low place opposite where the depot is now at Anthony. The ditch started above Alamitos and came down as far as opposite where the depot is now. There was some good land there. Pepe was the only one who planted because there was a claim from the State of Texas somewhere for the land and the laws of Texas were very strict and somebody claimed the land. Pepe did plant a portion in spite of the claim but they did not do any more, the ditch was abandoned. Pepe planted one year only. He remembers the names of some of his associates and gives the names of Gregorio Duran, Lauterio Gomez, Claro Cadena, Jose Perea, Pancho Jurado. He does not remember the names of others. Gregorio Duran is living at Chamberino and he thinks that Duran is younger than he is. At first Scott had a ranch and afterwards he took charge of the mail. At that time the mail ran in on horseback. He does not remember seeing any stage coaches. Scott's house was not far from the hills on the east side. When he first became acquainted with the country up there he knew a place called Tres Alamos or Dos Alamos below Alamitos and the river was then something less than 200 yards from Tres Alamos. He has recently seen that place but he does not know how near it is to the present railroad. He knew a place called the Alto de la Bruja which is right there at Tres Alamos. That whole place is called Dos Alamos and La Bruja. He knows a house called the house of Gualdarama. When he first

became acquainted with the river up that way, the house was not there. With reference to the place where that house was afterwards built the river was below. The river used to overflow that whole country. The house was on top of the height. The river flowed a little this side of where the railroad is. Towards the setting sun. The river used to strike the hills at the place now called Vinton. He did not know the Estero Redondo de las Sanguijuelas but he knew where the Sanguijuelas were. They lived above Canutillo at the foot of a hill where there is a piece of land covered with pelillo grass and there was water there in which they lived when he first knew that place. It was near to the place now called New Canutillo. The Arroyo de Artesa was inside of the bosque on the other side of the river, but he did not know it, he only heard that it was over there. The place which he knew as Sanguijuelas was above New Canutillo. He has recently seen New Canutillo where there is a bridge and when he first knew the river right there it formed a little bend towards Old Canutillo. It was not very far from the place where New Canutillo now is, about 50 yards only, and it formed a little bend. There were some large cottonwood trees there, a few. The bosque was on the other side of the river because on this side it is lower and the water was always running this way. At New Canutillo a bend began in the river which came to Old Canutillo. When he first knew that country Doroteo Salado was living at Old Canutillo and Salado was already a grown man. The witness knew him and his wife and all his family. He used to belong at Chamisal in the same district in which the witness lived. His oldest child was a boy named Leandro and a daughter named Hilaria, and another boy called Tomas and another, a younger one. He had four children, three boys and one girl. He was a man of medium size, neither fat nor lean. The witness does not remember that anybody else lived there at Old Canutillo. He knew a man named

Agapito Rival who lived at Chamisal but he did not know of Rival's having any place up the river. Being asked in Question 173, if Rival was a man that pretended to be a doctor, the witness answers, that his wife was, that his wife was a doctor and a midwife. From La Bruja to Old Canutillo the river formed a little bend and from there it went close to the hills and the river went to Duraznito from there which is the place where the river used to strike. Duraznito was a volunteer tree that grew there, but he never saw the tree; he was told that right above Duraznito there was a ford but he never crossed it himself. He was told that between Canutillo and Duraznito there was a ford. Between those two places the river was not far from the hills and it was not near. There was only a little bosque there of alamos, a little patch of trees there, from which place they took water at one time. That was on the east side of the river. He knew Chapo Reyes perfectly well. His house is there above the brick kiln, where some woman lives. His daughter lives there. Her name is Angela and he believes she is still living there. When he first became acquainted with that part of the country the river did not pass far from where Reyes had his house because there was a little bosque on the other side and the water ran towards the cleared place. Chapo Reyes did not plant any land, he was a herder. Being asked in Question 189 if the river ran near to or far from the hills from Duraznito to where Chapo Reyes had his house, the witness says that opposite to that place covered with willows it ran a little far because from there towards Montoya the river struck the hills. He does not remember if Montoya is above or below Duraznito, but there is a house there, a little below Montoya. The house of Chapo Reyes was above an old brick kiln that is in ruins. When he first knew that place the river ran right there where the old brick kiln is and in those early days he became acquainted with White's old ranch which is below where the old brick

kiln is on top of a hill. When he first knew that place the river was running right adjacent to the hill on which White's Ranch is. When he first went up the river there was no house at that place, but he first saw a house there long after he made his first trip to Dona Ana and he was grown up at that time. He knows the Piedras de Amolar below White's Ranch and between White's Ranch and those piedras the river ran right close there and ran right on top of the rocks. There was a great whirlpool there and the water spread all over the rocks. The whirlpool did not have a name. He knew the old town of Amoles and he was one of the settlers and the town that was washed away by the river was the place where he lived. He does not remember how long he lived there. It is not the same place as Chamberino, but he lived at Amoles about four or five years. There was a good deal of sickness there on account of the wet places and they went back to El Paso. He was at Juarez when the river destroyed the town. When he lived at Amoles Don Simon Enriquez, Don Jose Maria Garcia and a good many others whom he knew lived there. He does not remember how long after he came back to Paso del Norte the town was destroyed by the river, but when he went back the people had moved to the place called La Cueva near where La Union now is and that was after the river had destroyed the houses there. He was very young when he went to Amoles, not fully grown up and when they were digging the ditch he used to go there and help them what little he could. Amoles was settled he thinks, but he is not certain, when Mesilla was settled. When he was young he traveled up and down the west side of the river and going that way he left Paso del Norte through the bosque and the road went by the dam and by the Canoncitos up in the mountains and they came down from the mountains at Cerro Prieto at the Cuesta del Poleo. The road did not pass in sight of the Piedras Paradas. It was very far in. He could not see the Piedras Paradas

because there was a great deal of bosque and tornillo and the road went through the bosque. In those early days he went to the Piedras Paradas many times. He could not see the river from the Piedras Paradas on account of the bosque, tornillo and willow to the east of the Piedras Paradas. He knew a place called the Corral de Tapia and the ruins are there yet. When he first went up the river he could not see the river from the Corral de Tapia because it was running at Duraznito. He knew the Alto de los Cuarones which was outside of the bosque and from the top of the hills he could see the river at some small places. The river was very far from there, but he went up on top of the hills sometimes from where he could look towards La Cobrena. When he lived at the old town of Amoles the river was very far from the town towards the east and there was a big estero there nearer to the town than to the river. At this point as appears on page 1713 of the record, the witness said that he was very tired and a recess was taken. After the recess the direct examination of the witness was resumed and he says that when he went to Amoles to live three of his brothers went with him and they were making the ditch so that they were among the first settlers and they went there to acquire a right by working on the ditch. He does not remember who the official was, charged with the duty of giving the lands to the settlers and as soon as they finished the ditch he went back to El Paso. Somebody remained there partitioning the lands but he was not there. Jesus Enriquez is apt to know because he always lived there. The road through the bosque on the west side of the river was called the Paseno road. It went right by the town of Amoles, on the west side. He knew only one road and on the east side of the river there was only one on the top of the hills. Below the hills the country was full of water near the house of Gualdarama and of Pena. Where the houses are the road went right by there. The road passed right by where the houses

are. The first time he went there were no houses. Being asked about the houses he declares that he said that the road passed by the Pena house and the house of Don Jose Gualdarama, near his ovens and near his house. The house of Pena is there now and was near Gualdarama's house and they are adobe houses. The word "Paseno" means anything that belongs or pertains to El Paso. The people of El Paso are called "Pasenos".

On cross-examination the witness being asked if there was a road that went by the Alto de los Cuarones, says that the road went through the bosque it did not go up on the hills and that there was not a road that went on the hills by the Alto de los Cuarones. He is then asked in Question 260, how did he travel on the Paseno road when the flood waters reached over the valley, and he says that the water did not go to the road. Notwithstanding this answer, in Question 262, he is asked where was the road when the flood did go over the Paseno road, and he says the travelers made a turn on the hills where there was no water. He says the road went by the Corral de Trosas in the bosque. He says he did not know the corral itself, but his brothers told him, here is Corral de Trosas. The road passed by the edge of the place of which his brothers told him here is Corral de Trosas. He is then urged to tell how many yards or varas or steps, but he says he does not know and repeats that he did not know where the corral was and that he never knew. He knew where the Alto de los Cuarones was and the road was not very far from that place and went through the bosque. He knew the place called the Cobrena and it was at that high hill that is there. The road was very far from that place, more or less about 300 yards. He says in answer to Question 277 about the old town of Amoles, "We were the ones that went there to settle the place. We were the ones that went there to build the ditch." Simon Enriquez was there after the

ditch was built. Before the ditch was built they got water to drink from wells. There were quite a number of wells. From the place where they built the town the river could not be seen but he knew it was right there in the bosque. After the houses were built at Amoles the river was very far away. He cannot tell how many yards, varas or miles as the bosque was very thick. The bosque was very thick at Corral de Tapia and all along the edge of the river the bosque was thick. There were cottonwoods, willows and ash trees. There was a stretch of cottonwoods above Corral de Tapia about that thick, (indicating by the hands 8 to 10 inches) but very few large cottonwoods. There were large cottonwoods in several places in the bosque, you probably could not locate where they were. There were trees all along the edge of the river—trees which would make good rafts to take to Juarez. While they were digging the ditch at Amoles he knew Jose and Jesus Enriquez who were born and raised there. The witness thinks that Jesus is the older. They are both living. When they were digging the ditch Jesus may have been four or five years old. Jose was next to Jesus and he thinks he was six years old. He was very young. He does not know how old Jesus was when they were digging the ditch. He could not tell his age, and when a person is as young as the witness was then he could not tell about ages. He does not know what his own age was. "Especially when a person is not very intelligent, he does not tell about those things." Being asked to make an estimate he says he was about 9 or 10 years old, but he is not sure. He thinks he is 5 or 6 years older than Jesus Enriquez. In those days he knew where the Island of Jose Maria Garcia was. Afterwards when they passed along the river with rafts Garcia was living at a place where a bordo of sand was and they called that the island. He was living there, his farm was perhaps inside of a willow grove, the witness himself did not see him. He lived at the town of Amoles. The bordo

of sand where his farm was he does not know how far it was from Amoles. Everything was a bosque, it was so great and so large. He was lying down on that bordo of sand and at one time when they were coming along the river with rafts and there was a tree in the middle of the current, he hallooed out to them and said, "Boys look out". There were some rafts which belonged to Quero that belonged there that were tipped there with the arms that the men had; they struck the tree and sank down and only parts of the rafts could be seen. He thinks that was below Amoles. Being asked in Question 312, how near did the river run to the farm of Jose Maria Garcia, the witness says he did not know his land. Garcia was lying down near the river and the witness thinks his farm was next to that place and Garcia himself was right at the edge. They took out the ditch from the river to water the land at Amoles above Chamberino. Being then asked how long was that ditch, he answers, "From Amoles to Chamberino, all that distance, and almost in front of Berino. You may judge what the distance is." The tree against which Garcia warned them was very far down the river and Anthony is away up the river, but the river ran from above Anthony to that place. The river only made a bend in front of Anthony. That was not the only bend between Anthony and White's Ranch. Between those points there were two or three bends and short ones. Some of them might be 100 or so yards long and some of them shorter than that. There was a short bend and the other was the larger one. Being asked where was the largest one, he says as it was there in the bosque you could hardly know where it was and the bosque hid a part of the river there at that place. He thinks that the bosque hid the river from those alamos a little way down below from La Bruja. It was pretty short, it was not a big bend. It was not very far from La Bruja. Being asked about how many yards or varas, he answers that they were hauling the wood in

the water and asks how could a person take notice of those things. They were traveling in the river. From the road you could know very well, you could see the river that it was leaning towards this side. It was always bending towards the hills. In Question 337, counsel tells him that all the changes in the early days were towards the east and he answers, "Yes, sir". And in the next question counsel attempts to put the words in his mouth and tells him that every time the river left an old bed and made a new one, it made it on the east side of the old bed, to which the witness answers, it had no other place to go to. In the next answer he says it might be it was because the land was low on the east side because the river went that way all the time and kept going until it struck the hills all the way along to White's Ranch. It left very few trees on this side. Some tornillo and once in a while a large tree. There were some very thick trees here and there scattering, the land was left on the other side. He did not know the river when it was further west than it got to be later on. It was leaning towards the east; and being asked if he never knew the river anywhere else, he says, in some places, for instance, at Duraznito, it made a little bend there. He does not remember that it ever changed its channel at any time. As the overflows of the river took place in May you could not travel at that time at all on this side. You had to cross the river to go on the other side and to get through all these high hills and quite a lot of work on the road. When the river was dry they traveled all along by the railroad when the railroad was building and before they avoided the lagoons and stagnant waters and took the road again before the railroad was built. Being asked what effect did the flood have on the hill road, he answers, that the river filled up to the edge of the hills from White's house to New Canutillo when it came down to that place through the monte. The main road was up on the hills. Sometimes they came to Las

Cruces and persons summoned to serve as jurors were compelled to go there. When he was summoned to go to Las Cruces he already lived at Chamberino but he had to go to El Paso where his brothers were, but if the sheriff summoned him of course he had to obey; the sheriff summoned him when he was here at Paso del Norte, but he does not remember the date that was. When he served as a juror he lived at Chamberino but when he went to Chamberino he was already a grown man. He never knew Price Cooper. He knew Santiago Magoffin and worked for him making adobes at the town where he lived. He never worked for him at White's Ranch and he does not know when Magoffin cleared a farm above White's Ranch and did not know that farm. He did not remember an irrigation ditch which came down by Old Canutillo. He does not remember when they surveyed the river in the early days and he never saw any people camped along above White's Ranch with tents and soldiers. He knows where the monument is up here west of the smelter and he knows when it was put there. He was already a grown up man when it was put there. He does not know why it was put there. The day they fininshed building it he accidentally went there and saw them put some bottles in there and cover them. He does not know which way they went after they built that monument. They made a road through the hills in order to reach the other monument above the hills. Several wagons were there. He does not remember when surveyors were camped in Paso del Norte about three years before that, nor when they were camped down at Socorro, and he does not remember the name of Salazar nor of General Conde. He does not know a monument to the west of Dona Ana. When he first knew the river at Alamitos it ran about 50 or more yards by there as the spot was cleared up when the flood had overflowed and above that place there was a sand hill and all of a sudden it was carried away by the river and from that on it ran by Alamitos. Below

Alamitos it ran straight until it got to that monte. At those times at places it ran straight like an acequia. It ran next to the monte, the monte was right there next to the depot. Being asked in Question 395, how far from the hills did the river run between Alamitos and Dos or Tres Alamos, he answers that it struck at that height and along La Bruja to that monte, there was a branch that came around, which does not appear to be responsive or very intelligible. It then appears that the witness feels sick, being asked, through the interpreter, and the interpreter on page 1723 states that the witness says he is trying to give answers the best that he can but at this time his head is dizzy and he does not know what he is talking about. Counsel then tells the interpreter to ask him if that was as true this morning as it was this afternoon and the interpreter says, "No, sir, he says in the afternoon he has these feelings and even in the afternoon he has fever"; and after some further colloquy about his physical condition and the trouble with his memory an adjournment was taken until the next morning.

On page 1724 his cross-examination was resumed and the witness says that he feels much better this morning. Below Alamitos it was all bosque, very thick bosque in that direction. All on the west side of the river. On the east side of the river there was land, cleared land. There were no trees, one tree here and one tree there, all scattered. It was good farming land. Pepe who is deceased, planted a good patch of corn. It was a good piece of land. He planted three almudes of corn. It may be said here that an almud is one-twelfth of a fanega and a fanega is something like two bushels. That good land did not extend down as far as Old Canutillo, but from the monte of La Bruja in that direction (pointing eastward). Between the edge of the monte and the river channel the stretch that could be planted was about 200 yards wide, it was absolutely clean and clear and he

thinks that was the widest part of the valley on the east side of the river. Below Doroteo Salado's house, it was wider than 200 yards. From the edge of Montoya down this way it was not very wide. From Chapo Reyes' this way it was wider until it got to the hills right where the river struck the hills. He is then asked in Question 442 if he ever saw the whirlpool at Piedras Paradas and he answers that he never saw the water running there until now, this year. At this point on page 1725, there is some confusion in the questions and answers, but counsel finally elicits from him a statement that he had been at Piedras Paradas after the raising of the flag at Mesilla and was looking after oxen in that neighborhood for perhaps a space of ten years and he has never seen the river at Piedras Paradas until now. He went there almost once a week to look after the oxen. After he ceased to look after the oxen he has been there as he passed by and he never saw the river there. After Amoles was destroyed he also used to go there to look after the oxen, as they were crossing at the llano and there he could see the river from the top of the sand after Amoles was destroyed. It was not then very close to the hills on the east side of the valley. After Amoles was destroyed the river ran by the Alto de los Cuarones for a time, he cannot tell how long but it ran there some time. After Amoles was destroyed it was at some distance from the Corral de Tapia in the bosque. The first time he went by Alamitos he did not see Scott there, but on the second trip Scott spoke to him and asked if he wanted to work for him and he said "Yes". He had only a shed there then. More or less, the witness might have been 30 years old at that time and his baptismal record says he was born in 1835. The second time he traveled up on the east side of the river he does not know exactly how old he was. He may have been less and he may have been more than 30 years old. The only trip before that on this side of the river was when he was 7 or 8 years old

and that was when he went with his brother to bring their father back from Dona Ana and no one went with him and his brother and they traveled in a wooden wheeled cart with oxen and his brother was already a grown man. He is then asked if Scott's wife was at Alamitos when Scott asked him if he wanted to work, and he says a woman by the name of Guadalupe, a Mexican woman. He does not know who fought the battle of Mesilla. He is not sure that he knows anything about that battle. Being asked if he knew of the battle of Temascalitos, he says that he was very young but four of his brothers went there and they were in that battle on the Mexican side. He says the Mexican government forces people into the army whether they are willing or not. His brothers were already grown men at that time. The one next older than the witness was not a grown man, nor the one next older than that one. He then says the oldest of his brothers was Enrique and next to him his brother Hilario, then Juan Jose, then Antonio, then Jose and another, Aniceto, and about five years after that brother was born, the witness was born himself. He adds, "Then you can judge whether they were all grown or not". He does not know anything about the Temascalitos fight. He knows that his brothers were forced into the army. One of them was working for another man in Juarez and he did not want him to come but he came at last. His brothers are all dead. Just after the battle they all ran away. They crossed the pass there (pointing northeastward) and went in that direction. The American soldiers who fought his brothers remained there and the witness does not know if they came to Paso del Norte. He remembers that some of them passed by a mill owned by Manuel Berunda and there was a high sandy hill near his house and they stopped there and raised a flag on top of the hill. That hill was near the river on the other side. He does not remember that they camped there for any length of time, but he thinks they were there about two or three days.

He does not know what then became of them. Three or four days afterwards the ox train with Americans went down to Chihuahua. When Scott hailed him and asked him if he wanted to work, the river was a little inside (pointing to the westward) something like 400 yards from Scott's house, because it made a bend there and then came back this way. At the time that Scott hailed him the river was not running at Dos Alamos but afterwards. The first flood that came struck a very soft sandy place and then it took the current right straight there. He thinks that was in the same year that Scott asked him if he wanted to work and he worked for Scott three years and a few months. During those three years from La Bruja it ran westward and came back and struck where the Pena house was. He was not married when he went to work for Scott. Being asked if at that time the river ran where New Canutillo now is, he says that a bend came, it was a short bend but it struck right there at the point where the Vinton brick kiln is and then it came back below the brick kiln and formed a branch of the river of which the signs are there yet. Then the water came back together at a certain point and came back to Sanguijuelas. New Canutillo was below Montoya and the Sanguijuelas was between New Canutillo and Vinton. He is then asked in Question 487 if in testifying yesterday about the old river he was testifying about what he saw when he was 7 or 8 years old or when he was about 30 years old and worked for Scott and he answers, something in connection with the time when he was with Scott. He says he stated that when he came with his brother his brother was telling him the names of all the places. They did not stop at all those places when they were going after their sick father because when he left White's house it was all full of water, the whole country was all full of water. When they went up and they came back on the same road, all on the top of the hills. They came back three days after they got there. All those lagoons

were full of water at that time and all the low places where the railroad now is. There were overflows of the river and the water came near the old road on the hills and the water filled the low places. He is then asked in Question 497, "And the river was very high both going up and coming back down when your father was sick?" The witness answers that there was no rising of the river but the water was that which overflowed from the river to the arroyos near the hills. They went up in the month of October. At that time lots of Indians lived there where the bosques were. The Indians killed the people who traveled along the road whom they could kill. The road on this side was not as well traveled as the other on account of the Indians. He is then asked how long the river continued to run after he worked for Scott on the east side of the valley, and he says about three years and he worked for Scott three years and a few months and then, the words being put in his mouth by the question to which he answers, yes, sir, indicate that all the other times when he saw the river except when he was 7 or 8 and after he was 30, he saw it from the west side of the channel. On page 1730 of the record counsel tries to worry the witness about why he went so far up the river as above Amoles to cut timber to raft down the river and finally extracts from him that it was because they were looking for the places nearest to the river as he told yesterday. Because they had to haul the wood on their shoulders. They cut the wood about 20 yards from the river and packed it on their shoulders to the river. They went first above Chamberino looking for the places where there was the most wood nearest to the river. He is then asked if he preferred to pack it to the river on his shoulders rather than to haul it in carts a little longer distance, and he says there was no way to take along the carts through the bosque. Nobody would think of going from El Paso to those places with a cart to haul wood when one man alone could

bring three cart loads in one raft. There was no use to haul wood in carts as the wood was so very near the river. The only man that he remembers who used to haul wood in carts to El Paso was Don Simon Enriquez. He is then told in Question 522 that he does not understand the question and he is then asked if no one ever hauled wood from where it was cut to the edge of the river in carts and he answers that it was not possible and no use to take any carts there when the wood was so very near the river and there was no road for the carts. He is then asked if there was not a ford at Duraznito and he says he heard that a ford was below Old Canutillo but he never saw it and never crossed it. He is then asked if there was a ford near where New Canutillo now is and he says at Canutillo it is there was a ford and another ford above, a little below Sanguijuelas. Counsel still tries to worry him about why carts were not used to haul the wood which had been cut to the edge of the river and he finally says it could be done if anybody had been willing to do it, but what use would it be when the trees were near the edge of the river, sometimes they used to cut a tree and it fell into the river. What would be the use to have carts to haul the wood with? He is then asked if the river always flowed by or near Doroteo Salado's house and he says that he told before that it made a little bend there and then came back and struck Duraznito. They used to haul some wood this side of Old Canutillo on one occasion. He is further asked about the river at Duraznito and says that he stated before that from New Canutillo it made a bend towards Old Canutillo and then came back and struck Duraznito and then it came on running down stream. The channel was at a little short distance from Duraznito. He is then asked about what he had testified as to somebody building an adobe house and counsel says that he does not know where it was and didn't get the name and the witness says it might be Epimenio Pena and there

were not any other houses but that one and that of Gualdarama. He does not remember how old he was when he first saw those houses and says he is such an ignorant man he does not know anything about dates and asks how he could tell of those dates; it was after he had worked for Scott. At this point the interpreter tells us that the witness says his head begins to bother him and that he wants to rest a while, whereupon a recess was taken. In Question 538, counsel asks him if when he first went to raft wood and met Ben Dowell and Dowell told him about his land, that was the first time he had ever rafted wood and he answers, that he had made several trips with rafts of wood. When he met Ben Dowell he was perhaps 20 or 25 years of age and Ben Dowell when he first knew him had a very fine race mare that they called La Petaca. He did not have the mare up in the valley there but had it right here. The witness never knew that Chapo Reyes had a race mare; he was only a herder. When he first went to cut wood, he does not remember that Ben Dowell was living up there above White's Ranch, but Dowell came on horseback to where he was. After that time he did live there. He does not know when it was as he only went on the other side of the river to the bosque at that time. Before Ben Dowell stopped him he had been rafting wood for over five years. He thinks that his first trip on the rafts was with some fellows by the name of Perea, but he always worked on the west side of the river because that was the only place that there was wood. The witness did not know the family of Ben Dowell and being asked if Chapo Reyes had a family, he says he only knew one woman at the house that he thinks was his daughter, who he is informed still lives there. Ben Dowell said it was his land from Duranzito down, and the widest point of the valley at Ben Dowell's place he says he thinks was right opposite the Bordo de Arena which was a bordo of sand made by the winds. It was on top of the hills and it is there

yet. There were more or less about 400 yards from the road to the Bordo de Arena and the river was still farther and was perhaps more than 500 yards because it went and flooded the highway that was there and then the river came back to this side again. The Bordo de Arena was on the edge of the monte and is there yet. From the edge of the hills the bordo follows up above. From the very edge of the hills the river was about 500 yards. Ben Dowell claimed all the land from the edge of the hills down to Duraznito.

On re-direct examination the witness says that when he went to Amoles to work he was helping his brothers to throw up the loose dirt in the ditch and there were no tools except hoes and he was not able to do as much work as other men and was still a boy. One of his brothers died from a pain below Santa Teresa under some big cottonwood trees that were there. In the years after the house at White's Ranch was built some Americans lived there first and afterwards Gregorio Valencia who was there as a herder. The witness thinks he was employed by Benito Dowell. The witness was employed by Don George who was mayordomo for Santiago Magoffin when they built the fort which was called Fort Magoffin. He was a grown man at that time. He did not get married until he was very old. He was married at Juarez and his wife was Querina Mirabel, and afterwards he was married again. He was a widower about one year. His second wife was Luisa Gomez and he married her at Juarez. The Bordo de Arena about which he testified a little while ago is on the west side of the river on the hills. There was a cut-off there which went towards the post, towards the bosque, the California post station. That post was on top of the hills where the railroad goes to California. He knew the road long ago since he was a boy, but that post was put there after the railroad came. In Question 585 he is asked if the wagon road that he

traveled which came through the Canoncitos came down near the Bordo de Arena, and he answers that there was a road which came by the foot of the hills until it came to Muleros and when the carts were empty they would take the cut-off and go by the Bordo de Arena and save some distance. He is then asked if that was the same road that went by the Canoncitos. He says there was no other road and he does not think there will ever be any other road. The land which Pepe planted for one year was this side of Anthony where the monte is. That ancon was quite wide. There were lots of tornillo there which ran to the edge of the bosque at La Bruja. After the ditch was constructed some people from Texas went there and claimed to own the land and the people stopped and said they would not work there any more that being the case, but he said he would plant anyway at all risks.

On re-cross examination he says that he does not know when he went to show the river first, that he has been so sick and is so sick now that he does not remember the date; and that he is so sick that he may have made mistakes in his testimony here on account of his head. He is asked if he showed the river to Mr. Van Patten and he says, yes, and to some other persons, he does not know their names; and the other Mexicans who went with him were people from Dona Ana and Mesilla and Las Cruces and he showed the river to Don Eugenio during this year.

On further re-direct examination, he is asked if he was able to find and point out to the people with him where the river ran when he first knew it and he says, "Yes, sir; I knew it. And he knew the river also because he used to run the mail, he knew the river better because he ran the mail there." In this answer he evidently refers to Colonel Van Patten, who himself has testified that he was engaged in running the mail or the stage coaches which carried the mail. The witness is then further asked

if he actually showed the other people who were with him the places where the river used to run, and he answers, "Yes, sir, I did see it".

We have next the testimony of

JESUS ENRIQUEZ

which begins on page 1737 of the record.

He testifies that he lives at Amoles which is on the Refugio Grant and that he does not speak English. The particular place on that grant where he now lives he calls Refugio Amoles. He was acquainted with the old town of Amoles which was destroyed by the river and he lived there before it was destroyed. He remembers when the river destroyed Amoles and while he is not very sure he thinks it was in '66. He does not remember when the soldiers were at Mesilla and did not see them when they were there. When the town was destroyed he was already married. He was born in 1844 and was 20 years old when he was married. He was born at Juarez and went to Amoles when he was six years old. His father was Juan Simon Enriquez. His father went to Amoles first and after they constructed the ditch he took the family. He says he can give the names of a good many of the people who lived there before the town was destroyed. There was a square in the center of the town and the people lived all around. They had started a church but had not finished it. The church was on the south side of the plaza and was a chapel. He is then asked to give the names of the people who lived on each side of that plaza and he says he thinks he can give part of them and thereupon he gives the names of 49 people. He is then asked who the commissioner was who divided the land among the people and he says that Father Ortiz was the first commissioner. He says he can find that place now where the town was and that a little less than a year ago he showed to Mr. Post, the surveyor, where the town

was. It was in the summer time. He thinks it was in September in 1912, the year before last. His present place of residence may be about 300 yards from the old town to the north. He was at home when the river destroyed the town and the people scattered at the foot of the hills and it was then the town of La Union was formed and settled. Some went to Mesilla and there and everywhere. Damacio Castillo lived in the old town on the plaza next to Jesus Montes who was his father-in-law and they were in partnership. Castillo lived in the same house with Jesus Montes. The lots were small, a lot the size of this room (about 25 by 45 feet) was large enough for three people. There were some persons by the name of Cuaron there but he does not remember the Christian names. There were three brothers Cuarones and there was a man by the name of Ricardo Ramirez and Sixto Yrigoyen, Eugenio Abalos, Antonio Noriega, Jose de la Ariola, Felipe Ariola, Vicente Garcia. There were three Abalos, Valentin, Jose and Enrique, and the three lived there. He then mentions the names of Cristanos Herrera, Mamilo Lujan, and a man by the name of Mariano but he cannot recall his surname and another by the name of Lucas. The men went there first before any women went there on account of the Apaches and the women went afterwards. He then mentions Reyes Escontrias, Nicolas Martinez, Antonio Rueles, and Jesus Dominguez, but does not remember the names of others. Those whom he has mentioned he knew personally. When the river ran through there all of the houses were destroyed.

On cross-examination he is asked if Eugenio Van Patten lived in the old town of Amoles and he says, "Yes." He is then asked, why did he leave him out, to which he answers, that he did not remember him; he has not given the names of those that he does not remember. Don Eugenio was married when he lived there and his wife was Benita Madrid, who was a Pueblo In-

dian and she was a niece of Don Simon Enriquez. He was then asked if Don Enriquez had any Indian blood or was it his wife who was an Indian, and the witness answers, "His wife, my mother." The witness thinks that Don Eugenio married his cousin in '62 or '63 in Juarez. He does not remember how long she lived, but she lived quite a long time. She is now dead. He does not remember when the stage coaches began to run. He was born in Juarez in 1844. He has not a copy of his baptismal certificate, the record is in Juarez. He is six years older than his brother. He has but one brother living, Jose, who was also born in Juarez in 1850. He was married in '64 and something near two years later the town was destroyed. He is not very sure but he had been married about two years. He is then asked when did Don Eugenio come to live at Amoles with reference to when he married and he says that he took Don Eugenio Van Patten from El Paso to La Union in his father's wagon and he himself was not married yet. He is then asked if he said "La Union" or "Old Amoles", and he answers "Amoles" and La Union was not founded until after Amoles had been destroyed. He was not in Amoles until after they dug the ditch. His father was there then; when he went there the ditch had already been completed. He did not see Father Ortiz lay out the town, but Don Jose Maria Garcia, through the orders of Father Ortiz, made the distribution. He thinks the land was then in Mexico. They laid out land three or four thousand yards this way (pointing eastward) and the ditch came this way (pointing southwest). They used to name the grant at first the Refugio Grant and afterwards they left a good deal of land outside of it. He is then asked how near was the line to the old town after they surveyed the grant, and he says, he did not go to see where that line was. Some other men did. For each family there was laid out 250 by 700 varas; for a single man 250 by 500. They

began to cultivate land at Amoles just as soon as the ditch was completed. He was about 6 years old, perhaps 7, when the ditch was completed. He is then asked if he can remember what occurred when he was 6 and 7 years old, and he answers, "Yes, sir." When a young boy he knew the Piedras Paradas and he knew the whirlpool at the foot of Piedras Paradas. He is then asked if that whirlpool was there when he was young, in Question 91, and he says, there were ruins there only and you could see water that came from the hills that gathered there. The piedras were in this direction from the road (indicating by pointing west) and the road was coming that way from Piedras Paradas (pointing eastward). There was not a river-bed at the foot of the Piedras Paradas, it was all bosque. In going from Paso del Norte to Amoles he traveled the road on the west side which was called the road that leads to Amoles. It went by the Alto de los Cuarones. Here there is evidently some misunderstanding because he is then asked if the road passed over the edge of the alto or at the foot, and he answers that it was not a height, it was a prairie land; and in answer to the next question, he says that the Alto de los Cuarones was quite a distance from there. The alto was so called because at that llano there were six of the Cuarones. They were coming from Amoles and the Apaches met them there and those brothers died there, three of them. They were coming from Amoles and he had lived at Amoles for some little time when those men were killed. They were some of the settlers there. At that time there was quite a number of war-like Indians in the country and he did not dare to go out of the house himself on an errand. He does not remember when they came here where Franklin was afterwards and drove off a herd of government mules, but his father got from them a team of mules stolen from White's house. The mules were tied up on the road from Piedras Paradas and there were

about 15 carts in the bunch. The mules belonged to a man by the name of Benito Dowell. They were tied by the mouth so as to prevent their making any noise. His father was traveling in front of the wagons and one of the Apaches shot at him. Benito Dowell claimed the mules and Dowell lived at the corner somewhere here on one of these big streets. He was told that Dowell had his mules at White's house. When they took those mules he was coming with his father on horseback and was about ten years old, he knew what was going on then and he was riding his horse by himself. His father was in the lead and as soon as it got to be very dark, his father told him to go back where the wagons were and then he took the lead and came ahead of the train. They did not cross the river but remained on the west side. The river was very far on this side (pointing eastward). He traveled on the east side when he was young. He is then asked if he knew where Ben Dowell lived up above White's house and he answers that it was long, long afterwards. A man by the name of Felipe, a son-in-law of Ben Dowell whose other name the witness does not know, his wife was called Mary. He is then asked how old he was when Felipe went to live up there and he says he was already a grown up man. He does not remember how many years he had been married when Felipe went there, but Felipe lived there for a short time only. Quite a number of people used to go there to cut wood and built jacales here and there. They all said that Benito Dowell claimed all the land from Duraznito down this way, on the east side of the river. Every man from El Paso used to cut wood there on the east side of the river; and he is then asked in Question 125, if there was much valley there where they cut wood and he answers there was a very little on this side (pointing eastward), but they used to cut wood and put it on the water and they made rafts. After they cut the wood nobody cultivated the land. He is then asked, if he knows where the monument is out here by the smelter, and he

says, "No, sir"; and then asks in substance if it is the large monument that is in Mexico on the other side of the river, and he says, he knows it, the one on the other side of the river. He does not remember when they surveyed the line that that monument marks. It may be said here that the monument referred to marks the line surveyed after the Gadsden Purchase was made and is on the present boundary line between the two Republics, and that the treaty by which the Gadsden Purchase was made was in December of 1853. He does not remember when the custom house was at White's Ranch. The first custom house he ever knew was right here and when he first knew it, he was already married. He knew Santiago Magoffin and Jose Magoffin, and first knew them right here. He knew Jose Magoffin as a custom house guard and he was the first man he knew there. Jose lived in that direction there somewhere (pointing southeast). He moved from one house to another and lived there. There were very few houses here then. In here (pointing northwest) was Mr. Dowell's house; next on the big street the Alarcones; where the depot is now a man by the name of Guillermo Tryer. Where Charlie Lawrence lived there was a little bit of a ditch. Where the big street is now there a little ditch crossed and another ditch was along side of it. The river ran near where a ditch was and the bridge was, a bridge over the ditch where the road crossed the big street which went to Paso del Norte to catch the ferry boats in the river. He is then asked if they had a ferry boat where the upper street car bridge is now and he answers, "Yes, sir". There were two fords, one above that and one below, and they used the ferry when the river was up. When he was a boy there was more water in the river usually than now and there were very few of them farming in the early days above. In Question 148, he is asked if it left more water to make the floods because few people took out water to farm with; to which question objection was made on the ground that he was

not an expert whose opinion would be of any value, but he answers that the river overflowed all the time when it rose and most of the years it did rise and overflowed everything. He is then asked if it reached from Amoles over to where the railroad now is in the summer time from May to August, and he answers, farther up from La Mesa down this way it covered everything and followed different channels this way and that. The floods in some places brought down cottonwood trees and lodged them in the river channel and in some places the trees remained and in other places it just carried them away. He is then asked in Question 153, if when those trees lodged it would cause it to make new channels; and he answers, "Sometimes the trees fell there and the water surrounded them and went around and around and then the river used to go there that way and then this way" (pointing first west and then east). He remembers the Island of Jose Maria Garcia which he visited once in a while only. It was about three miles to the south of Old Amoles and at that time there was stagnant water there. He is then asked if there was a river-bed on both sides of the island, and he answers there was a bank on the south, on the north, and the west, about seven feet high. The river channel was to the west, very far to the west from the island. He saw it to the west of the island many years ago when he was young. People never went there, the estero was very deep. A little bit of water came into the estero from the north and then it went that way (pointing southward) and the river was very far from it. Don Jose Maria Garcia did not have farming land in that island that they spoke about, the farming lands were the bank and the river was part of it to the west, another was toward the south and on that island the river never threw down any timber. This seems to indicate that the mind of the witness was still engaged with the questioning about the floods and the throwing down of the trees. There was in the middle of the island a mesa and the one that was formed

was still higher yet. The farming was on the island where the land was higher and they got water on that island from the Refugio ditch which came along towards the land. He knew a place called the Bend of Cobrena which was so called because a man found there a copper kettle. Cobrena means that the kettle was made out of copper. The river did not go by that place where he found the copper kettle, it was very far from it. He knew a place called the Corral de Trosas which was a corral made of sticks and poles and pieces of poles, a corral for the cattle. It belonged to the father of old man Garcia. There was not any house at that corral. The only house between Piedras Paradas and Old Amoles, when he was young, was the ruins already at Corral de Tapia and the walls are standing there yet. After he moved to Amoles he made many trips down to Paso del Norte on the west side, every two or three months, and when he was grown up he used to handle his father's carts going up and coming down with wood and everything. He hauled wood to Juarez in the carts at many times through the Canoncitos, and many people hauled wood that way. He is asked if he knew any man living on that side of the river by the name of Juan Sais; and he answers that his name must not be Juan Sais; and he is then asked if it is Juan Sains, and he answers Juan Archuleta who was a rancher who had an old house very far inside at Muleros on the west side of the channel of the river. It was a kind of a shed and he kept cattle. The river was very far from his shed yet. He had a well there and the cattle were grazing. The cattle did not water at the well but went to the river. That was not near Piedras Paradas, and the Cobrena was way up, far above. It was not between the two. This man stayed there by himself and used to round up the cattle once in a while. Most of the time the Indians did bother him and when the Indians got his cattle he used to come back to Juarez, where he had some milk cows and he used to take up there two or three at

a time. The cows were loose and he used to round them up every two or three days. He thinks the Indians got this man's herd of cattle about three times, and he usually had about 50 head. He knew Price Cooper living at Ysleta. He is then asked if he remembers when Cooper cleared some land for Magoffin up above Old Canutillo, and he answers that the one who cleared some land was Calixto Benavides. That land was cleared a short time ago; in the year 1844 no land had been cleared there. Up to 1844 no one had cleared any land on the east side. He is then asked if they didn't start to dig an irrigation ditch up by Old Canutillo in the early days, and he says there was nothing at all of that kind then, only ruins. In answer to the next question, he says the ditch was made by Calixto Benavides and James Cooper and that he saw him working there with Calixto Benavides, and also Saturnino Carabajal. Those were the first ones that cleared land up there, but that very same year everything was covered with water. Counsel then tells him in Question 208 that when he was 8 years old a farm was cleared there near Old Canutillo and a ditch dug at least three miles long; and the plaintiff objected to counsel testifying about what was done. The witness is then asked, however, in the next question, if he ever saw or heard of that ditch, and he answers, yes, and that it came out in front of Vinton and was a ditch built by Guillermo Tryer, and he, the witness, was already a grown up man when Tryer started that ditch, but he does not remember how long he had been married, but he was already grown up. The ditch that was built by Tryer belonged to the government. He is then asked how long that ditch was built before Amoles was washed away, and he says, that Amoles had already been destroyed, but he does not remember the date very well. He never heard of the battle of Mesilla nor of the Civil War between the North and the South, as he was then very small, but his father knew something about it. He did not know himself anything

about it. He heard somebody mention about John Baylor and the battle up there about Mesilla, but he never saw it as he was very young then. He is then asked about how old he was when that happened and he says, he was born in '44 and the war took place in '46 he thinks. Counsel then tells him he is not asking about the Mexican War, and the witness says that he is referring to the war above Alamitos at the place called Temascalitos, and he could not know anything personally about that battle; but he is then asked if after that battle, at least 13 or 14 years after, he heard of any other battle above Alamitos, and he says he has not heard anything about it. He is then asked if he did not hear of a battle at Mesilla and he says he remembers about Mesilla, and that battle of Mesilla was a political fight, and he was there himself at the battle. And being asked what this political battle was about, he says he will tell now. "It was about three o'clock in the afternoon. The Democrats had just eaten their dinner. The Republicans were at John Lemon's house and the Democrats were at the house of John Bull. We, the Republicans, made a turn around that house. Seven hundred of us—perhaps more than that—and then the Democrats went out this way (pointing northward). When we turned around that way a man who was lame and had a wooden leg was walking with us when he found a man who had a flag. Then with a stick he struck at him. Then they commenced to strike each other and then pistols commenced to be fired and there was shooting all over and they fought quite a while. There were fourteen men dead and 46 wounded in all parts of the body. At eight o'clock at night, or about nine o'clock it might have been, the soldiers came from that fort up above. I think that name is Fort Selden. The soldiers came there to stop the fight. Mr. John Lemon died on that day. He was a county judge. They struck him with a stick there,—with a club." There were about equal numbers of Republicans and Democrats; and being asked

who whipped finally, he says the night came and they remained, one on this side and others on the other side. That was the only battle of Mesilla he knows anything about. He does not remember of the battle of Valverde. He does not remember the Mesilla battle where soldiers fought on both sides. He never heard of a man named Sibley, nor Canby, nor Major Lynd, nor Major Teel, nor Lieutenant Sayers. He always lived at Amoles.

On re-direct examination, he says that he was married in 1865 on the 7th of February, and he had known Mr. Van Patten before that time. He became acquainted with him here at Juarez and at La Union also, anl he was married before the witness. It was after he was married he came to Amoles to live, but he had been there before hunting. He lived at Amoles about a year. He used to visit there very frequently. He is then asked if he ever saw a whirlpool at Piedras Paradas, and he says, there was an old one below about three or four hundred feet. There was water there that came from the rains from the hills and there was a very ancient hole there. At the time he saw that whirlpool the river was not running by the Piedras Paradas. They were to the west, and the road this way (pointing eastward). That is the road on the other side of the river and from that road the river was a long way towards the hills on the east side. At the present time he has not been near the Piedras Paradas for a year. It is a little over a year that he has not been there but the river was about one thousand yards from Piedras Paradas this way and it was running towards the brick kiln which they called Miller's. The river was very high and it was running all over and everything looked like a river. Ben Dowell did not claim to own land on both sides of the river, only on the east side. That is what he heard said, he did not know anything about it. He is then asked if he didn't testify that he heard that Dowell stopped people from cutting wood up on the river and he

says, "No, sir". He is then asked if the river was on the west side of the Island of Jose Maria Garcia or was that only an estero, and he answers, an estero. People hauled wood by the Canoncitos to Paso del Norte in carts, short wood, about 8 or 10 feet long. He knew of their taking wood down the river in rafts. He knows Juan de Dios Sais, but he never heard of his having a ranch on the west side of the river.

On re-cross examination he says the last time he saw the river, a year or so ago, was not when he went with Mr. Van Patten, but he was traveling there by himself and had a few head of horses in that vicinity and he used to go there quite frequently a little over a year ago, and the river was one thousand yards from the Piedras Paradas above. The nearest water was one thousand yards away from the Piedras Paradas, more or less. It was quite far and there was no river channel against the rocks. He has never been with Don Eugenio at Piedras Paradas, but about 14 years ago he was at Corral de Tapia with him, when he showed him the Grant of Santa Teresa and where the ruins of the Corral de Tapia were. He has not been with Don Eugenio within two years at any place on the west side of the valley. He has not been with Mr. Post on this side in two years, but on the west side he was once at the old town of Amoles. When he was on the west side with the surveyor he and the surveyor only were there. He never was over there with any witnesses. The surveyor was at his ranch and asked him to go and show him, and he did. His ranch was very near that place. That was Mr. Post. Either in August or September of 1913, he believes, but is not sure. He went with him about 300 yards from his house to the old town of Amoles. He went there just to show him the old town. He has not assisted any one in securing witnesses. He is asked then if he went to Amoles first, at the same time his brother Jose went, and he answers, "Yes, sir", but he

then says that his brother was born at Amoles in the year '50. His mother was living there when they were building the ditch and his brother has the same age that the Refugio Grant has. The grant was already settled and the houses were there built. Father Ortiz did not do anything there but simply looked around, Jose Maria Garcia did the most. Counsel calls his attention to his having given the names of 50 or 60 people who were settlers at Amoles, and he says they had lands there and they built the ditch themselves after he moved up there. He is then asked in Question 311, if he can remember all that occurred about that from his own recollection or is it from what he was told, and he answers, that he knew them by himself, all himself, evidently referring the question to his acquaintance with the men whose names he had given. He remembers when they dug the ditch and how they did it. Don Eugenio was not living there at the time they dug the ditch; and he is then asked how long was it before Don Eugenio came, and the witness says he knew him in about the year '62 or '63, when he first came with Judge Newcomb to his father's house.

On re-direct examination, he says that he does not remember about Van Patten being a soldier. He met him once at Juarez. The first time he saw him was when he came up there with Judge Newcomb. They were hunting ducks, and at that time Van Patten was a single man, but very shortly afterwards when he met him here, he was married. He took Van Patten from here in a wooden cart together with his wife, and that was when he stayed there about a year, and from there he went to Las Cruces. He lived here at the ranch near to Courchesne about six months. He had a little orchard there with trees that he used to water with a watering-can. That was below the canon. He knew Van Patten's brother, but he remembers very little about him and he does not know where he lived.

The next witness whose testimony appears in the record is Charles L. Post, a surveyor, who prepared the map used by plaintiff to show its claims as to the boundary, and who made that map from the information derived from such witnesses as those whose testimony we have been already considering, but as there are two more witnesses of the same character, it seems better to finish with them before taking up Mr. Post's testimony, so that we will now come to the testimony of

PEDRO ALEJO

which begins on page 1958 of the record.

He says that he lives at Chamberino and was born in El Paso, Mexico, on the 29th of April, 1835, and remained at Paso del Norte until 1848, when he went to Dona Ana where he remained one year, and then went to Mesilla. He then corrects his statement and says that it was in 1849 that he went to Dona Ana and in 1850 to Mesilla. He was at Mesilla when it was first settled. When he went to Dona Ana he went up on this side and after that time he came down to Paso del Norte on some trips quite far apart. He remembers something about his first trip going up to Dona Ana. Before he went to Mesilla he made only one trip from Dona Ana to Paso del Norte and that was on this side of the river. At that time he remained only a few days at Paso del Norte, coming to attend the feast of San Lorenzo in the month of August. He went to Dona Ana in the latter part of January, 1849, because he was there on the second of February which was the feast day of the patron saint of that place. In 1849 he went up to Dona Ana and came down and returned. The river he could see it and he knew it and the names of the places he heard. He became acquainted with a place called White's Ranch which was near here as soon as you left the mountains. Leaving Paso del

Norte to go up the canon they would cross the river at a place below here which was called La Playa and then came by the place where Mr. Magoffin lived (pointing southeastward) and from here they went up the road. From here the road went by the old fort and by the canon where the smelter is and went down where the railroad is now and climbed another hill and went down again where there is a rocky arroyo and a little west from that arroyo was White's house. White's house was above that arroyo where the road came down. When he made his first trip up to Dona Ana, Magoffin was not living here and he does not know how soon after that he came here. When he first went up the river White's house was a new house and it was not occupied by anybody. It was a very, very short distance to the river from White's house. The house was on a height and the river was below where there was a playa and there were a few little cottonwood trees there. The water of the river was less than 100 yards from White's house. He did not become acquainted with a place called Duraznito and never heard of it. He became acquainted with a place called Canutillo and he saw it in those first trips in 1849. No one was living there at that time. Many years afterwards he knew of someone living there, but he does not remember just when. The first man that he knew there was named Cumplido. He thinks that the place where is now New Canutillo is where Cumplido lived. He did not know a place called Old Canutillo. He knew Chapo Reyes who lived near White's Ranch above, the first one that lived above that place. He was not living there when the witness first knew that country, but many years afterwards he went there. When he first knew the river it ran very near to the place where Chapo Reyes afterwards had his house. It might have been about 500 yards, very near, more or less, from the place of Chapo Reyes. Everything looks different there now. From that place

you could not see the river because there was a cachinilla there where Chapo Reyes lived and it was very thick. There are many houses there now and there is a woman by the name of Angela who lives there now, but he does not know the people who lived there. Angela, they say is a daughter of Chapo Reyes. He is not personally acquainted with her. He has only heard about her. He does not remember when it was that Cumplido came to live near the place now called New Canutillo, but he thinks it was after 1860, and he thinks it was after the Civil War. He did not become acquainted with a place called the Estero de las Sanguijuelas. Between the place now called New Canutillo and White's Ranch the river was very near the hills and when the water was high it overflowed the little bends there, but the current was very near the hills. The road ran in the hills. He remembers that shortly after leaving Alamitos they would come to a place known by the name of La Bruja and between Alamitos and La Bruja the river was near the hills. It was not straight but made bends, small bends. He knows the present town of Anthony, which he thinks is right there at Alamitos. He has recently seen that place and he does not think he recognized it because the railroad is there now and everything looks different from what he knew. When he knew it there was a little bosque there. He is then asked if he was or not able to find the place Alamitos; and he answers, "Yes, sir," and he is sure it is the same place that he knew as a boy and he says he knew the place on account of the bend that is between there and the place called Tres Alamos. When he first knew that place the river was very near and when he went there recently he found an old river-bed near that place. He does not know just what was the place called Tres Alamos which was sometimes called Dos Alamos. People coming on the road from Temascalitos used to stop there. The river ran right by the

tree at Tres Alamos and right where the railroad is now. When he went to that place recently at Alamitos they went from the place where there used to be an old ranch of an American and followed the river from there to the dividing line between Texas and New Mexico and from there they came here. They did not follow the old river-bed farther down because it was very cold and he was not feeling well and was full of mud, his feet got muddy and he got cold. The ground was very wet. At the place now called New Canutillo, when he first knew that place, the river was very, very close. You could see the water in the river there. The river now goes by the other hills on the other side. He saw a bridge at the place now called New Canutillo and there is a river running under that bridge. He never heard the name of the beaver dam mentioned. Between La Bruja and the place now called New Canutillo the river was almost straight. It crossed the bends made by the hills. There was a half bend, a small bend there. The road between Alamitos and White's Ranch sometimes went along the bottom of the river and at other places along the edge of the hills and they called Alamitos an abrevadero or watering place. There was only one road on the east side of the river between White's Ranch and Alamitos. He cannot tell very well in what places the road ran on the low ground because everything is different there now and the railroad is there and he cannot tell very well. He would not dare to tell, everything has been changed there by the railroad. When the road did not run on the low ground it was on top of the hills. It came down some very short little places on the river bottom. At some places you could not come down because the river would overflow and get on the other side of the road and for that reason you had to go on the hills. Those places where the road in dry times came down to the low ground were very short. After he came to Mesilla to live in 1850,

he went up and down the river on the west side once or twice, but not enough to become well acquainted with that side of the river. He lived at Mesilla from 1850 until 1870, but went at some times to Pueblo Viejo and El Cobre, with his family, but most of the time he remained at Mesilla. When he first knew it Mesilla was on the other side of the river which ran between Mesilla and Las Cruces, and Mesilla is now on this side of the river. He cannot tell exactly the year when the river chnnged, but he remembers when it changed. It was the very year when the Texas soldiers came to Mesilla that the river changed. The river went through the ditch called Acequia Brava after 1860. After the river changed at Mesilla the river was not running near Alamitos after that. After he went to Mesilla to live in 1850 he worked for some surveyors from Mexico. He waited on them at table. He remembers the names of two of them. The general commissioner was Salazar and the other one was Augustin Vordicu. He was a Frenchman. (This name is undoubtedly as well as the witness can remember it, but was really Vaudricourt, and the records show that he was attached to the American side of the commission which was making a survey in 1852). When he worked for them they had their camp near Picacho which is on the other side of the river and Dona Ana is on this side. Mesilla and Picacho were on the same side of the river then. As long as the two were there they kept the camp in the same place. It was in the month of April. He is not very sure what year it was, but it was either 1851 or 1852. He is asked what those people were doing there so far as he knows, and he says they had come from Matamoros, and they were doing some surveying. There were 18 men belonged to that party and they were all Mexicans. He heard there was an American commissioner camping somewhere near there who was competing with the Mexican Commission. He thinks his name

was Caniliche or something like that, but he does not know where he was camped. He does not know whether that was his first name or his surname. He is the one who was competing with Salazar. He saw a monument on top of the Picacho hill. Salazar went back to Mesilla and Vordicu constructed the monument. He saw them build the monument and he was working for them about that time. They had their camp up there about a month, but it might have been a little less. They had to go from there to California but he did not wish to go with them and for that reason he did not work a full month with them. While he worked for them there were two or three young brothers by the name of Diaz who were here at Senecu'. There were seven Mexican commissioners scattered along the country and the two Diaz brothers were at the end here at Senecu'. The river washed Senecu' away. He did not have time to see any of those other camps and he did not see the Diaz brothers, but he was told that they were very young. One was 18 years old and the other 20 years old. Mr. Salazar told him that and he said they were very bright and very intelligent. Mr. Salazar was a very pleasant man and he talked with his peons. He does not remember Salazar's first name, he did not hear it. He never saw the monument again after it was built. It has not been there since 1854 when they took it and moved it up here to La Ceja. In 1854 General Trias went to Mesilla and was there for some days. He was there in May, 1854, and by September, the monument had been changed. The witness had then gone to Texas himself. He went to San Antonio because he did not want to be a soldier. They raised the American flag at Mesilla in September while he was away at San Antonio. In the month of May General Trias came there and he caught the witness and ordered him to be a soldier, and the witness ran away and crossed the river which was high then, but he swam across and got away

and remained working in some ranches below here (pointing southeast), near here, until the month of July and then he went to Texas. There was a big wheat crop that year and he worked in the fields cutting wheat. He traveled to San Antonio with a mule team as a driver. He was working for a man by the name of Valdez. He remembers something about Dionicio Parra but he cannot tell positively, it seems to him that this Dionicio Parra is the man who went to California, but he is not sure. He does not know the man who has been called the Apache because he was a captive of the Apaches when he was a boy, and he does not know him now. After the time that he worked at that camp, he did not see any other surveyors from Mexico up the river.

On cross-examination, he is asked when he saw the river between White's Ranch and Alamitos lately, and he says that recently there is no river there, it is a long time since there is no river there. When he got his feet muddy showing the river was the day before yesterday, either Monday or Tuesday. He is then asked with whom he went and says, he does not know the owner of the automobile, but Mr. Van Patten was there. He has known Van Patten sometime ago, and he requested him to go and show the river. He first spoke to him about the river on Sunday in the afternoon. The witness was at his home then and he told him to come to the Berino store in order to come down here. The witness does not know how Van Patten knew anything about his having any knowledge of the old river and he does not know for whom Van Patten is acting in this matter. Counsel asked him why he came and he says, because Van Patten called him and told him to come, but he was not compelled to come. Van Patten asked him the favor to come and he came. He met him when he started at the Berino store on Sunday in the afternoon, yesterday eight days ago. Van Patten asked him if he would come down here

and he told him yes, and he came on Monday, meeting Van Patten on Monday at the Berino store and then came down to Anthony and from Anthony they came this way. Alamitos which he first knew was where Anthony now is. From the store at Anthony Alamitos was about 100 yards west, or not quite that much. It may be that he is mistaken but he thinks that is the distance. Being asked what direction was the little bosque from the store at Anthony, he says, as you came out from the store at Anthony a little bit above it near that place there is a house of the old American where the stage post was, and right there is where Alamitos was. There used to be a house there called the Post. When he first knew Alamitos that American was not there yet, but maybe he was there on the second or third trip which he made, he does not remember exactly when. He left here for Dona Ana in the latter part of January and in the following August came back to San Lorenzo for the feast and then he went back to Dona Ana. He does not remember how long it was before he made the next trip. It was perhaps then two years, perhaps less than two years. The American keeper at the post at Alamitos was not there then. When that American was there it was in 1854. The witness does not know how long before that he built the house. He may have had a wife, the witness knew that he had some children. He had cows there. The coaches were running. They established a post there, from there to Mesilla. There was a stage line from Paso del Norte to California and through Tucson,—stage coaches and mail coaches. There were several posts along the route and it may be it was this American or another American who kept one of the posts, and that post was there when the flag was raised at Mesilla. When he was with Mr. Van Patten Monday a week ago they were right at White's Ranch. They took a meal at Canutillo and from there they came as far as

here and traveled in an automobile from Anthony to Canutillo. There were no other witnesses along. Another old man was there but he does not know if he was a witness or not. He is from Loma Parda, New Mexico, and he thinks he is also a witness. He is here. The witness has not talked with him about the old river since he has been here. He contends that he knows the old river better than the witness does and the witness contends that he knows it better than he does, and they have been disputing about it all the time. They are able to agree on the location of the old river. No American has been talking to him and the old witness about the old river. Mr. Van Patten has been here since the witness has and he sees him now and then, but he has not talked with him about remembering the river. Mr. Van Patten did not ask him what he knew about the old river, he only brought the witness here on account of his being so old a man. He was investigating the ages of several men, residents of the town, and found out that the witness was the oldest and he thinks he brought him here on that account. There is no other older than himself at Berino, neither American nor Mexican. It may be that Van Patten brought him because he thought he knew a good deal about the old river. Van Patten has brought several others younger than the witness and others older than he from La Union and Chamberino and it may be these people told him that the witness might know something about the river and that makes him believe that that was why Van Patten brought him here. When he stopped at New Canutillo the other day he saw the present river right there where the bridge is. Question 194 is, "You told General Clancy, a while ago, that the river was on the west side, next to the hills." To this the witness answers, that he said that the river was running on this side all the way against the hills, on this side. When he was at Anthony he knew right then that that

was the old river-bed and he knew it because he found it there now. He first heard of the name of Dos Alamos or Tres Alamos during the trips in those early days that he used to go up and come down. He never stopped there himself.

After a recess the Attorney General of New Mexico stated to counsel for Texas that immediately after adjournment at twelve o'clock, he asked this witness if he did not remember that he had talked with Mr. Reber and Mr. Chaves and himself on Saturday and that he appeared as nearly as the Attorney General could understand him, to think that he had not been asked about anything of that kind or he did not clearly remember it. The Attorney General of New Mexico then requested counsel for Texas to ask the witness if it is not a fact that he on Saturday did have a conversation with Mr. Reber and the Attorney General and Mr. Chaves acting as interpreter because he did, and the Attorney General does not think he intended to conceal anything. And thereupon counsel for Texas asks the witness if he knows Mr. Reber and he says he does not believe he knows him as he cannot see very well, but he knows Mr. Amado Chaves and the Attorney General of New Mexico and he saw Mr. Chaves and the Attorney General on Saturday and had some conversation with them on Saturday, the day before yesterday; and he adds that he did not remember it before but he did have a conversation with him and he told them all about his working for Mr. Salazar and about knowing the river when he was young. Counsel then asks him in Question 207, if he told them on Saturday that it all happened so long ago that he could not remember very well. To which the witness responds that he remembers everything better,—what took place at that early time than even what takes place now and that he is more satisfied of what he knew then than what he knows now. In answer to the next question, he

says he remembers perfectly well when he left his home where he was born and went to Dona Ana as a settler there. He did not go as a servant of Salazar the first time he passed White's Ranch but Salazar found him at Mesilla after the year that he spent at Dona Ana. He is not sure what year it was. It was either the year '50, '51, or '52, one of those years, and he worked for him less than one month. He does not know how long Salazar stayed there. There was a house at White's Ranch on his first trip in January. It was a very new house. It may be it had been built three years before, perhaps less than that. It was already built in '49. He is then asked if White was living there in '49, and he answers that he had abandoned the house already on account of the Indians, nobody lived there. When he came down the second time, or the first trip he made after he moved to Mesilla, the house was abandoned yet. He is then asked if he heard the names of the American commissioners when he worked for Salazar, and he says only the one he stated before who was Caniliche, the Commissioner on the American side. He did not hear the name of Bartlett, nor Emory, nor Whipple, nor Radzaminsky. He is asked if he knew of General Garcia Conde and he knows when he was camped in Paso del Norte,—a very fleshy fat man. Garcia Conde was a collector of customs at Paso del Norte and one of the big commissioners. He never heard that General Garcia Conde was in the battle fought near Chihuahua. He does not seem to know about the Sacramento battle near Chihuahua, and says he only heard of the battle fought by General Angel Trias at Santa Cruz de Rosalia below Chihuahua. He does not know of a battle this side of Chihuahua early in '47. He does not remember when Doniphan camped for five weeks in Paso del Norte. He never knew that White's house was a custom house. At Mesilla he heard somebody say that there were some surveyors accompa-

nied by soldiers near White's Ranch, but he cannot say the date nor the year. When he was working for Salazar he does not know where the American commissioners were. He heard that they were somewhere, but he never saw them. He never heard that the two commissions divided their forces into seven squads. When he was working for Salazar, Mr. Coude was living at El Paso and was the collector of customs. He was not a superior officer over Salazar, the witness only knew him as collector of customs. When he first crossed the river to go up to Dona Ana he thinks Santiago Magoffin lived here, but he does not remember very well. He remembers his place where there was a government post, but that was in 1854. When he passed here on his way to San Antonio there was a fort then and Magoffin lived at the very fort itself; but he does not know how long Magoffin had lived there. He knew Price Cooper at Ysleta, but he did not know where he and Santiago Magoffin had a farm up about Old Canutillo and he never saw in '54 or prior to that time, an irrigation ditch in the valley there. Counsel then asks him if he remembers when the road ran in the valley all the way from just above White's Ranch to Alamitos, and he says, the road used to run most of it against the hills, except in a very few places. There was no other road going up and in some places they were compelled to leave that road to avoid passing through the water. He is then asked, if he could not travel in the valley when there was no overflow and very little water in the channel of the river, and he answers in the negative, and says in some places it did, but not in all of the road, evidently understanding the question to be where the road went. From White's Ranch to Alamitos in places the road was very near the channel of the river and in places it was quite far. In places it just struck the edge of the hills, evidently meaning the river, just at those places where you

had to follow the hill road. He will not make a calculation, meaning an estimate, of the greatest distance from the road on the hills to the river which was at the bends. At some places there were a very few trees in the way, tornillo trees only between the hills and the river. At the edges of the hills there was mesquite. He cannot tell the exact date when he made his first trip on the west side, but he remembers that that was the first year that the Indians attacked Mesilla and it was long after he worked for Salazar but before the Texans came and fought the battle of Mesilla. He does not remember how long before, he believes the Texans fought at Mesilla after 1860. The first trip he made on the other side of the river was when the road was first opened and he thinks it was in the year '53 and it was after he had worked for Salazar. He thinks his first trip on the west side was in 1853. He did not come down and go back on that side as when he went back, he went on this side of the river. He did not go on that road on the west side until he was quite old. It was about 20 years ago that he used to go over that road. On that trip in '53 he learned the names only of places near the mountains here, near El Paso. He heard of the Canoncitos, of the Piedras Paradas, and the Alto de los Cuarones. He heard the name of Corral de Trosas, but he never knew where the place was. He heard of Corral de Tapia which is very near Amoles. He did not hear the name of Cobrena. He knew a town called Amoles. He knew the rock called Piedras Paradas, but he never saw the river flowing by the foot of those rocks. You could see the river from that road, but it was very far from the road. You could see it from Piedras Paradas because it was a high place. You could see the river from that place towards this side very far from it. He could not see it from the old town of Amoles. When he went up the river in 1853 there was no one living at Canutillo nor at Tres Alamos

or Dos Alamos. There was a well there. He does not know who dug the well. There was no well at Alamitos for the stage station. He does not know what they used the well for at Tres Alamos. He did not know Doroteo Salado. He is then asked in Question 292 if any such man ever lived at Old Canutillo and he answers that he heard that a ranchman was living there somewhere and that the Indians were bothering him very much, but he does not know who the ranchman was, and he does not know of any house at Old Canutillo. He did not know or hear of a place called Duraznito up to 1853, he heard sometime or other about Duraznito, but that is all he knew of it, and he did not know about the location of Old Canutillo nor of La Bruja, nor the Estero de las Sanguijuelas. He knew White's Ranch, Tres Alamos, and Alamitos as stopping places by their names. When he went up the river the first time there went with him, his mother, some brothers-in-law, and some other persons. Some old people went there to settle Dona Ana; they said it was a good town. The first place that he went to, to live was at Dona Ana and the following year he went to Mesilla. In that party there were about fourteen, very few men, one wagon and two carts full. The Indians were very bad, they made war on the Mexican people, and used to kill them. It may be the Indians were in the hills near Alamitos. He says the people did not travel at night to avoid these Indians. Going up that first time before they arrived at the house of Magoffin they crossed the river. The next night they camped where the California bridge is now. One of the wheels of the wagon broke and they had to bring it here to have it fixed. That delayed them two days. He crossed the river below because the ford was nearer to his house at Senecu' than to come here to town and cross. At that time he crossed at Senecu' which was considered Paso del Norte at that time. From Paso del Norte to Senecu' is less than two leagues from the church. After the wagon wheel

was mended they camped the next night at White's Ranch and the next night he believes they stopped at Alamitos. At Alamitos there was some tornillo brush, but no bosque. There was no valley land that could be planted at Alamitos. The valley land that could be planted was towards the other side of the river. The river ran very near where the stores now are at Anthony. He thinks the railroad is now just at the place where the river used to run, a little above Anthony. And being asked in Question 322, "Between there and what place?" He answers, "And Dos Alamos. The river made a bend from Temascalitos to Dos Alamos." When he first knew the river at Anthony it was not at the place where the store is, but some distance west from the store. He is then asked, how many feet from the railroad or from the stores west was it to where the river ran, and he says the signs of the old river are there yet, it may be it is three or four hundred varas, but he cannot tell exactly what the distance was. He was reminded of where the river used to be by the signs he found there Sunday, a week ago. He is then in Question 326, asked this hypothetical question, "If the signs had all been covered over with flood water what would you have done?" He answers, but his answer does not seem responsive, that the currents from the water from the hills at Anthony itself is where the water in the arroyos used to come down and one of those arroyos is between where the store is now and where the Scott's Ranch was, where Alamitos used to be. The signs and appearances he used to know have been destroyed and all that he saw was what he took to be the channel of the river. He is then asked what he saw then by which he is now able to locate the old river, and he says, Scott's Ranch, that he remembers the name of Scott's Ranch and that he would call that as a mound—a very certain sign. Between Scott's Ranch and the town that is below there is a mill now. When he walked on Sunday with Van Patten and the others, he walked right

along the places that he knew before on the edge of the old river where he stopped himself sometimes. He knew every bend in the river from Temascalitos down to Alamitos; and being asked if he also knew every bosque on the east side, he declares there was no bosque there, there were some scattered tornillo bushes where the battle took place in 1846 at Temascalitos. He is then asked if he knows why all the valley land and the bosque were on the west side of the river, and he says, yes, sir, the river came this way and those were on the other side, all of it. As long as he traveled along there, the river ran very near Tres Alamos. After the Texans went away in '61 the river was not still running at Tres Alamos and he does not know where it ran. It went the other way. After the Texans went away the river at White's house used to run where it is running now, and perhaps it was then a little bit nearer to White's house. Counsel then leads him to say that when a boy he saw the river running where it now runs, west of White's house. But a little further on he says, from the year '60 when the Texans came here the river has run in several places and it ran very near White's house, and it is very near now. He is then asked if it is very near Chapo Reyes' house and he says, he cannot tell, he does not know, but he heard that it was running very near that place, but he has not seen it. Counsel then asks him how many trips he made up and down the east side of the river after the Texans went away, and he says, he used to travel all the time and he does not know how many trips. He got water at White's house. The river was there and it is there yet. He thinks the next place where he stopped to get water was at La Bruja. The river was there and some small cottonwood trees. At Alamitos there was only Scott's Ranch. They built a ditch a little above it. He thinks Scott built the ditch. The ditch was there after the Texans came. After the Texans went away the water was very near the place which counsel mentioned a little

while ago but he has forgotten the name already. The river did not change hardly at Alamitos and he thinks that the river abandoned Alamitos in the year '95. After the Texans went away he does not know where the river ran at Alamitos then, but it used to run at that place before, very near. What he remembers is that the river used to run near that place, but he does not know when it left that place. He was at Mesilla when the battle was fought there which he thinks was in '61 or '62. A man by the name of Colonel Baylor commanded the Texans and he whipped the others. The Federal troops after that battle went to Fort Fillmore, they ran away at night. They hid the ammunition at some water holes at Fort Fillmore and then went across the mountains. The following day they followed them and captured an officer by the name of Borosy and some of his troops and brought them back to Brazito. Borosy was a fat, chunky man. Baylor captured the Federals at San Agustin, at the end of the Organ mountains. He does not remember the name of General Lynd, he only remembers Borosy. After Baylor had gone away some more Texans came and they went to New Mexico that time and he thinks they fought some battle in New Mexico, but he does not remember the place now. Another general relieved Sibley and they fought the battle of Canon de Cher, near Fort Union. That was not Valverde, they had already passed Valverde and fought there. He thinks it was in May that the battle of Valverde was fought, because the river was high and some of the soldiers got drowned. He went to San Antonio, Texas, in '54. He was not intimately acquainted with Juan Maria Ponce de Leon, but he knew when he lived here and this was the hacienda of Juan Maria Ponce. He is then asked in Question 373, if he remembers when Ponce did hauling and freighting for the commission that was making the survey, and he says, that it may be that he was not the Juan Maria Ponce, he thinks he was already dead. He does not remember

what year he died, but when he passed this place Ponce was already dead and had already sold his ranch. He is asked why Salazar built that tall monument near Dona Ana, and he says it was not at Dona Ana, but at Mesilla, and they said that that was the boundary line that they were following all along the river from Matamoros, and then to start from that place to California. He heard that Matamoros is on the Rio Grande in that direction (pointing southeast). When he was working for them, he was told that they had already surveyed from Matamoros down as the seven commissioners arrived here at that time. He does not know anything about their surveying from the Copper Mines towards the Gila river, but he heard that the commissioners had to start in that direction. He does not remember when the surveyors were camped at the Copper Mines. He never went that far. They wanted him to accompany them along the line to the west but he refused to go because he was afraid on account of the Indians. When he went to San Antonio freighting there was a fort at the mountain called El Aguila, or Eagle Mountain, and they went to Las Limpias Ford. They followed the river some distance to La Vaja and from there they went to Limpias. He does not remember the places from Las Limpias on. They spent thirty days on the trip to San Antonio. He was taking care of mules. He remembers Comanche Springs which is very near San Antonio. He does not remember the Leon water holes, but he remembers the Devil's river. They crossed it quite a number of times and it is the Pecos river. He does not remember a Frenchman who lived at the ferry at the crossing of the Pecos river. They crossed it a number of times, it was a long river and a lot of bosque on both sides of the river. He thinks that the Devil's river is the Pecos river. At this point he says that he is getting very tired. He says that at the place where Chapo Reyes had his house maybe the river was 500 yards distant, more or less.

On re-direct examination, he says that when the river changed at Mesilla the river carried away the old town of Amoles and the people got away like rats to the hill side. He is then asked, if he could see the river from the valley below Piedras Paradas or if he had to go up on the hills above the rocks to see the river, and he says, the road ran through the tornillo below the Piedras Paradas and years afterwards the river came nearer and they changed the road to the hills. When he first went that way you could not see the river from Piedras Paradas, you had to go on top of the rocks to look at it towards Muleros. It was a long distance. The river went right close to White's house. When people stopped at Alamitos, sometimes they went across to the other side of the river to let the oxen graze and at other times they went to the hills where there was grama grass, and better grass than in the bosque. He has been married once and was 28 years old when he was married at Mesilla. He has had 18 children that lived, two others did not live. There are seven of them living now, and he has 33 grandchildren who are living and only one great-grandchild.

We next come to the testimony of

JOSE DE JESUS GARCIA

which begins on page 1985 of the record.

He says that he lives in Garfield, New Mexico, in Dona Ana County, and is 85 years old on the 12th of next July. He was born at Socorro, New Mexico, which is a very old place, so old when he was born that even his parents did not know how old it was. He does not remember clearly how long he lived at Socorro, but he thinks it was until 1872, and when Sierra County was created he lived there for some years. He was living at Socorro County but on account of the creation of Sierra County he was thrown into Sierra County. Prior

to that time he had been down to this part of the country, and the first trip that he made was in 1844 when he thinks he was about 15 years old, because he was born in 1829. He came with his father to Paso del Norte. There was a caravan of 100 carts from Socorro County came down to buy supplies such as wine, dried fruit, and penoche (brown sugar) and other things they used to get from here. He does not remember how long it took to come from Socorro to Paso del Norte. They traveled very slowly with the carts because they were much afraid of the Indians. There were no settlements in this part of the country then and he thinks at Dona Ana there was some sort of a station there. It was a great big desert all the way to El Paso. At that time nobody lived from Dona Ana to El Paso. They stayed at Paso del Norte only a few days and they were trading, exchanging the wool and stuff they brought from New Mexico, such as blankets and carpets, and skins and then went back over the same road on this side of the river. He came here again after that in 1849 when he came following a couple of thieves who were traveling outside of the road and who stole a girl, a relative of the witness, and he was following them. They caught them at Canutillo. Nobody lived there then. His father and four or five other men followed the thieves. They did not catch the thieves, when they were getting near them they ran away and left the girl and he shot at one of them and must have hit him because you could see the blood on their trail. As soon as the girl saw them she started towards them crying. They stole her from Socorro and started first towards the mountains west of Socorro. They stole a mule from a neighbor and on the mule they carried the girl and the provisions. They followed the trail until they struck the river at Santa Barbara. The thieves crossed the river many times; they did not cross the jornada, but they followed the river trying to hide their tracks. At a place where the river was very deep they killed the mule and

then went back north about two miles in the water so as to leave no tracks. There they lost a good deal of time trying to find the tracks and traveled up and down the river and crossed it at different places until they found the trail. From there they were able to follow the track but at some places they would lose the track because where the water was low the thieves would travel along in the water for places of at least two miles. He did not come through Dona Ana on that journey. The girl was 18 years old, a very handsome girl, a large girl. They never heard anything more of those thieves, they had no occasion to get any more information. The country was full of Indians. They saw three or four Indians, but they did not come near them. After they found the girl at Canutillo, they turned back home from there and took the road on this side and they crossed the river at Valverde to go to their home. Canutillo was on the east side of the river. That is what they told him was Canutillo, he did not himself know but the older people told him that that was Canutillo. He did not notice particularly how near Canutillo was to the road, but it was right close there and the river was right close to Canutillo. It was not far from the hills to the river at that place. You could see the river from the hills there. In '62 he came with his own wagons to San Ignacio to take a freight of 14,000 pounds of wool and at that time General Sibley was traveling up. The battle of Valverde was on the 21st of February, 1862, and he came here after the battle. He thinks in September or October. He made another trip in 1877 and in 1856 he came down with his family to San Ignacio in a carriage on a pleasure trip to visit his cousins and he came down the same road that he came before. He stayed at San Ignacio about two weeks and went back over the same road. He became well acquainted with the different stopping places along the road. He became acquainted with Alamitos. Being asked if he can tell where Alamitos is, he says he will say what he can

remember, the country is very different now than it was then and he remembers Alamitos is near the house of Mr. Miller of Anthony. When he made the first trip with his father they camped for some time at Alamitos. The caravan stopped there for two weeks and the Indians ran away some of the oxen and from the camp where the carts were he used to go to the river to swim. The river was very near. Nobody lived at Alamitos. He does not know why they called it Alamitos. There were a few scattering trees there, cottonwoods. People used to get in the shade of the trees and rested in the shade. In 1849 when they came after the girl there was a station there. He does not know who lived there then but they told him it was an American. He did not see the American and did not go near that house. He passed by there. They were traveling fast with the girl. He did not go near enough to see what kind of a house it was, but he thinks it was a jacal. They did not stop. That was when they overtook the thieves at Canutillo. It was a little before noon and they started right back. He does not know how far they went but they traveled as long as they could that day and camped in the bosque somewhere near Dona Ana. They were traveling as fast as possible and were all on horseback. They had a horse for the girl to ride. In '44 there was nothing at Dona Ana as he remembers. In '49 there were people already there. From Alamitos down the river was crooked, it had bends by the hills. Where the river was running on the east side of the valley according to the bends that the hills formed, the river formed bends also. Between Alamitos and Canutillo according to his best recollection the river was from four to five hundred yards at the fartherest point from the hills. He did not become acquainted with the place called Dos Alamos or Tres Alamos. He heard the name of La Bruja, but he does not know where it was. Below Anthony he remembers the old people said there was a place somewhere called La Bruja, it was some-

where this side of Anthony. He has seen the place now called New Canutillo. They caught the thieves at Old Canutillo and it seems to him that it is below New Canutilo, quite near not very far from White's Ranch. The peope who came from our country were not very well acquainted with the country and these stopping places. He was recently at the place called New Canutillo and took dinner there. The country looks entirely different from what he knew at that time. It is settled now. When he formerly knew it there was nobody living there. Only Indians were around there. In 1844 when he first knew that country the river passed right near by the place now called New Canutillo and the bridge near it. He is then asked if the river was near to or far from that place in 1849, and he says, it was always on the east side of the valley, it was near there. Towards the west, they could see nothing but bosque. There was large bosque on the west side of the river, at places very thin and at other places very thick and very dense. All along from Alamitos to White's Ranch on that side, there was bosque. In 1844 they came to the place called Duraznito and two carts were broken there. They did not intend to stop there but two carts broke down and they had to camp there and were there two or three days. From there they started again and climbing the hill from White's house they had to camp again. He does not know why they called the place Duraznito. There were some very little hills east of that place and they said that was called Duraznito. He did not see any peach tree there. It was either September or October because when they got back the corn was ready to be gathered. At Duraznito the river was near the hills. You could see the river there. He did not go to the river but could see it from where he was and to his best recollection the river was altogether there. It did not have much water. When he made that first trip, he does not remember that there was any house at White's Ranch. In 1849 there was already

a house there and in '49 he went as far as San Ignacio. It was in '49 when they came after the thieves. In '44 they came as far as El Paso and in '49 only to the place where they overtook the thieves. That is some distance above White's Ranch. In '49 he did not go to the house, but he saw the house at White's Ranch. The first he saw a house at White's Ranch was in 1849, and that was before they overtook the thieves at Canutillo. He does not remember exactly when he went to San Ignacio, it has been so long, but he came down to visit his relatives there before he was married and he was 21 or 22 years old when he was married. After his first journey this way in 1844, he came to visit his relatives at San Ignacio and he does not remember very well whether that was before or after he overtook the thieves at Canutillo. He made so many trips here that he does not remember very well. One trip he made was with a cousin on horseback. They traveled on good horses and as fast as they could because they were afraid of the Indians. He thinks he was about 28 years old when he made that trip. He does not remember if it was on that trip to San Ignacio that he first saw a house at White's Ranch. He does not know who was living at that house. The river was just below the house. The river would strike there with full force. They called that place Muleros Ford. He did not pay particular attention to how the river ran from White's Ranch to the canon, but he thinks it formed a kind of a bend after leaving White's Ranch. It was right close to the hills, especially at White's Ranch, it was right close to the hills. Between Alamitos and White's Ranch the road followed the edge of the hills, but it came down at some places; at some places full of alkali. It would come down at some places where it was rather level and then climb again to the hills. He does not know if there was more than one road on the east side of the river, but he traveled on the road. In all his trips he traveled on the same road on the east side of the river. He does

not remember how many trips he made as far as Paso del Norte or San Ignacio before the Civil War, but he says, he remembers one thing now that the railroad is now this side of Anthony right where the river used to run. He does not remember whether that is the place where there are two or three cottonwoods. He is asked in Question 125, to tell about how many trips, approximately, he made to this part of the country before the Civil War, and he answers, in 1844 the first time; in 1846 he came with his cousin on horseback; in 1849 he came after the girl; afterwards he came in the carriage with his family. When he left Las Cruces he was coming straight through to El Paso. He made two trips on horseback and with the carriage one trip and with wagons he came in 1862 when he came to take 14,000 pounds of wool to Guadalupe and San Ignacio. At the time of these different trips the river was always there on the east side of the valley between Alamitos and White's Ranch and when he came down in 1862, the river was at the same place. After 1862 he made only one trip down here in 1876 when he came with the carriage and wagons to take the family of his brother from San Ignacio, and going back they went on the other side of the river. Being asked if he went through the Canoncitos, he says he did not know the places, that he was traveling with his brother who had sheep and wanted to get them across the river as contraband without paying duty on them. He is not acquainted with the west side of the river between here and Mesilla; and he adds, that there was no river there at the west side. That was the only time that he traveled that way, so that he cannot tell much about the places there, but they were camped after they struck New Mexico for about two weeks with the sheep. They were traveling with the family and the peons and the mayordomos were traveling with the sheep in a different direction. There were two flocks of sheep belonging to two brothers. He is then asked if he ever held any official positions and

to tell what positions he has held, and he says that in New Mexico he was a member of the legislature the first time in 1862, and afterwards in 1868 and in 1879 for the third time. He served as probate judge of Socorro County for two terms and in Sierra County he was probate judge for one term. He is then asked if he went to the legislature after 1879 and he then says, it was in 1878 he went to the legislature and that that was the time he knew Amado Chaves. He was school commissioner sometimes, and Mr. Chaves was chief clerk of the house when he was there in the legislature in 1878. He has been married twice and with his first wife he had five children and but one lived. By his second wife he has had eight children and six of them lived. He has not any grandchildren. The children of his first wife died and the second crop of children are all young and none of them married yet. Of the children of the second marriage the first one was born in 1892, and the others followed very closely. In July 1892 was the first one and there was another born seven months afterwards but it died, another little girl was born before the year was out, 12 months afterwards not quite complete, another girl was born. There were two boys one right after another, one is living and the other was killed by the surumatos in Mexico. After that two little girls were born and they are both living, one is 12 years old and the other a little over 13. The youngest is about 11 now; and after that they had no more children. His wife is very young, she is only 41.

On cross-examination, he testifies that he has served on juries in New Mexico many times but he does not read or write a word of English and does not understand the English language. His father absolutely refused for him to learn any English. He himself was very opposed to learning English and his father was prohibitive of learning it and would curse him if he learned it. He does not know a word of English. In order to carry out his

father's instructions he did not learn any. Nevertheless he has been a business man. His father was an officer in the Mexican army before he, the witness, was born. His father went as far as the Napeste river and was fighting for some time. His father said that Santa Ana betrayed them and he was always very much opposed to the Americans. He did not sympathize at all with the American people and even refused to handle American money. That was the reason why he, the witness, never tried to learn English, because his father had prohibited it from him. His mother was willing for him to learn English and wanted to send him to a college, but his father never consented to it. It may be said here that among Mexicans who have been well brought up obedience to parents is universal even after the children have attained a considerable age. While he was probate judge the proceedings were kept in English through an interpreter; he had a good interpreter, and he was probate judge on several occasions. All the laws in New Mexico were printed in Spanish so that he always knew what he was doing by reading the law in Spanish. During all the trips that he knew the river, at the times he saw the river it used to run all the time leaning towards the east on the valley. In 1844 when he knew it for the first time he was only 15 years old but he remembers it very distinctly, all he saw during that trip. When he took the sheep up the river with his brother as he traveled on the other side of the river he cannot say anything about the river. When they went into New Mexico they stopped with the sheep and stayed there two weeks and they used to bring the sheep to the river for water and the river was quite far from the camping place. The camping place was as soon as they struck the New Mexico line, at that time, in 1876, the New Mexico line was in the mountains, southwest from White's Ranch, at or near the place called Canoncito. They found no river as they drove the sheep along on the other side. The herders used to drive the

sheep on the llano and they would travel with the family along the road. He did not know the name of the road as he only traveled it once. After they camped where they stopped with the sheep for about two weeks, it was right opposite the place that they call now Duraznito, but the camp was up on the hill. It was raining quite hard and they used to select the driest place for the sheep. Only twice they took the sheep down to water and after that Don Nestor ordered them to proceed to New Mexico. Traveling on the west side of the river you could not see the river from there. There was only brush and tornillo, there were bosques. Where they stopped to rest traveling towards the east you could not see the river. When they drove the sheep the river was at the same place where he first knew it. When he went on the west side he could not see the river along that distance. They used to send the boys with the teams to water them and he does not know if they had to take the horses a long way to the river, but he thinks it was quite far because they waited quite a while to go and come back with the horses, and that was in 1876. When he came to rescue the young woman, he got no farther this way than Cannille. He is then told in Question 169, that that was the only trip he made that year and he says it was not the only trip, but there is evidently some confusion because he is then asked what was the other trip that year and he says he thinks he may have made seven or eight trips but not in that same year. He then says that that was the only trip he made in '49. His first trip when he knew those places was in 1844 when they came to Paso del Norte with a lot of carts. At Alamitos the Indians stole some corn and for that reason they stayed there about two weeks. The people followed the Indians and the corn that had been stolen they found them killed with the exception of one. From there they arrived at Duraznito where two of the carts broke and they stayed there several days fixing up the carts. His father was

at the head of the expedition and ordered them all to fix up all the carts that were out of order at that place. They left that camp and as they were climbing up the hill near White's house another cart got broken. When they recovered the girl they only came as far as Canutillo and he did not pay any attention whether from that place he could see White's house. After he went back with the young woman he did not come any more in that same year. It was in September that they recovered the girl. He thinks that he made a trip between '44 and '49 and several of them came down to El Paso on horseback, but he does not remember what year was that. After '49 he made some trips. That trip when several came on horseback he thinks was during the year '46, but he is not very sure. He is then asked in Question 184, if he would be willing to swear that he made that trip horseback between '44 and '49 and he answers, yes, sir, that he made a trip on horseback but on that trip he could not say anything about the places as they were traveling very fast on account of the Indians. Most of the time they traveled at night on that trip. The country was full of Indians. He thinks that was the only trip between '44 and '49, but he does not remember very well. After they recovered the young woman, he came back in '62 with his own teams when he came to San Ignacio and Guadalupe to take up 14,000 pounds of wool, that was in September, '62; and he always saw the river running towards the east of the valley very near the road and it was there when he came in '62 after the wool. Counsel then tries to get him to say that the floods in the river are always over by September, but he says that the regular floods took place in May when the summertime comes on and melts the snow in the mountains. When they went back with the girl they passed by Alamillo but no one lived there. He thinks there was a stage post, there was a jacal but he did not go near the house. It may be that somebody kept the stage post, but he does

not remember that he saw anyone coming out of the house. That house was very near the road but he did not pay particular attention as they were traveling very fast and had the girl with them. The road was always outside on top of the hills. There were hills near Alamitos over which the road ran, but not very high. The river was very near to the road as you could see to the left of us the river from the road. In front of Alamitos the road was on the edge of the hills which were low sandy hills. He does not remember how far those sandy hills in front of Alamitos were from the river. The river was running very near. He could not estimate the distance that the hills were from the river in front of Alamitos but the river could be seen from there, very near, and on the other side of the river the only thing you could see was bosque, and they camped there about two weeks. The boys of his age in the caravan used to go to the river to bathe and swim. It was very near to the camping place. That was where the Indians stole a number of the oxen. He did not come as much as a quarter of a mile from the wagons to bathe, the river was quite near. The wagons camped at the place where there was some sand a little above the hills. The people in order to fix the carts to get timber used to cross the river and get it. They would get cottonwood trees, not very thick. Some of the carts they put new axles on them and they used cottonwoods for axles. There was no other wood but that there. When he traveled down on horseback there were five of them in the party and they traveled through the bosques wherever they could to avoid meeting the Indians. Between Fort Brazito and the Ojitas de Agua they saw some Indians but they did not come where they were so they saw them only from afar, and they did not go where the Indians were as they were not hunting Indians but were trying to hide from them. When he made the round trip horseback there were about five in the party and when they traveled horseback they traveled at night

most of the time. If they left the bosque it was for only a very short distance so as to be able to get back to the bosque again. In some places the bosque was very thick and at other places it was not so thick. On one of the trips with carts the river was on the other side to the west of it and they came to the bosque at Muleros Ford and to White's Ranch then. Between Alamitos and White's Ranch they found enough bosque to protect them from the Indians on the west side, but on the east side there was none. Above Alamitos they crossed the river to the west because one of the boys knew that there was a bosque on the west side and in order to get to where some bosque was they crossed the river at some place near Anthony as it is called now, and they crossed the river back to the east at Muleros Ford. They crossed the river at that time to avoid the Indians and they used to lead their horses walking on foot through the bosques at night time. Being asked what they would do when they ran into the esteros in the night, he says that then they mounted their horses and passed them through the mud several times, several esteros. There were some places, some stretches of land, where there was alkali where a little bit of grass grew only. He has known Mr. Van Patten quite a number of years and met him for the first time when he was hunting for votes in politics many years ago. Van Patten once, he believes, took a prominent part in politics. When he knew him he was coming to where he lived with some of the leaders of the party as interpreters. He is well liked by the Mexican people and he has lived at Las Cruces all the time the witness thinks. He met him before he went to Las Cruces. He does not remember that he has held high office in Dona Ana County and he never heard that he was sheriff. He remembers that Van Patten was once employed at the land office, but he does not know if it was as receiver or as a clerk. He first heard that he was to be a witness in this case a very short time ago.

Mr. Chaves wrote to him from El Paso asking him if he knew anything about how the river ran in the early days and he answered Mr. Chaves telling him that he knew how the river ran between Anthony and White's Ranch. He thinks that Mr. Chaves asked him about the time from the '50's to the '60's if he knew how the river ran during that period of time. Mr. Chaves asked him if he remembered how the river ran, if the river ran towards the east or towards the west side of the valley and he answered that he knew how the river ran from the year 1844 and that when he was very young he traveled on that road and knew how the river ran and that it ran at that time on the east of the valley; and then Mr. Chaves wrote back and asked him to have the kindness to come here and give his testimony. In the year '44 when he first knew the river at Alamitos, he was still very young but he remembers that fact very well. He was 13 years of age and his father brought him on a short trip to get acquainted at Paso del Norte. He is then asked in Question 237 if he knew when he was young that there were two branches of the river from Old Alamitos and he answers, that he did not pay any attention to them at that time and only knew the place where they stopped and camped to rest. Between the places where they stopped when they traveled he did not pay any attention, but he did when they stopped. His father was in charge and at the head of the expedition and he ordered the expedition to stop for sometime, until they fixed up the carts at Duraznito where one of the carts got broken. They stopped near the river at Duraznito. Several boys of his age came along and went to the river to bathe. Being asked if the wagons were camped in the valley where the grass was growing, he answers, evidently meaning the oxen, that they went to the llano where there was plenty of grama grass and if they wanted to graze the stock on the west side of the river they had to cross the river. It may be said here parenthetically that the grama grass which does

not grow in river valleys, but only on the up-land is of very superior quality and much better than the grass in low ground. The witness says he did not pay any attention to whether there was a ford at Duraznito or not, and that they simply went there to swim; that was in September. They selected the deepest part of the river to swim in and the river would reach up as far as here (indicating the armpits). The wagons were on the edge of the hills and the wagons were near and not very far from the bank of the river. He rode inside of the carts all of the time and only got out at the places where they camped. They camped at Duraznito, at Alamitos, and at White's Ranch. Being asked if White's Ranch was known as White's Ranch at that time, he answers, that they called it the Muleros and he did not hear the name of White's Ranch then. In '44 he did not see any house there, but in '49 there was a house there, when he was coming down to San Ignacio where his first cousin lived. In 1849 he came down to San Ignacio. In 1844 he came to El Paso, and in '49 only as far as Canutillo and from there went back, but he believes he made a trip down this way in 1849, about two or three months after that trip when he came no farther than Canutillo. In '49 he came to Canutillo when he was following that girl, but a few months afterwards in that same year, he came down to San Ignacio. He made a trip to San Ignacio with a carriage and the wagon and took with him two of his sisters. He does not remember now if that was the first time he went to San Ignacio as he used to go frequently to that place. Since his first trip to San Ignacio he used to come there almost every year on horseback with some of his cousins. When they were traveling on horseback they were running away from the Indians so as not to be seen by them and in very few places they took the main road. When he and his brother came with the sheep he thinks there was a custom house at Paso del Norte and one at El Paso, Texas. His cousin told him that

he had already sent his sheep in care of some herders. This is evidently a mistake for brother and, as elsewhere explained in this record, a first cousin in Spanish is called "Primo Hermano" and "Hermano" means brother, so that an interpreter might readily make the mistake of translating "Primero Hermano" as brother or "Hermano" as cousin. The herd of sheep were sent with Don Nestor two days before they started themselves and the foreman was instructed as soon as they got within the New Mexico line to stop and wait. Don Nestor wanted to avoid the payment of duties in the custom house and for that reason sent his sheep outside of the road. There was never any custom house so far as he knows at White's house and he never saw any soldiers or surveyors camped at White's Ranch. Being asked in Question 271 if he ever heard of the United States and Mexico jointly surveying the boundary line, he says that a relative of his told him that the Americans and the Mexicans were surveying the river into New Mexico and he thinks that was in 1850. That relative told him that they had agreed on establishing the boundary line at Picacho and by taking that they had left them without any land. He did not hear that they had gone as far as Dona Ana to the north. That relative of his told him that a man by the name of Salazar was at the head of that survey, that he was a savage of the first water as he had allowed himself to be taken advantage of by the American commission and that Salazar was a shameless fellow; that the Americans had bought him out so as to establish the line wherever they pleased and he thought they were putting the line too far north for the benefit of the United States and against New Mexico, he thought, he did not know how to explain the matter fully. He did not hear of General Garcia Conde nor the name of any of the Americans in charge for the United States. That conversation took place, he thinks, in '50 or '51 but that man did not say anything to him about an army of soldiers accompanying each body

of surveyors. In 1856 he did not see any cleared land about Old Canutillo and he did not pay any attention to irrigation ditches. He is then asked in Question 285, if there had been an irrigation ditch there, and he had seen it, he would have paid attention, would he not? And he answers, if he had crossed a ditch at some place or other or near it, he might have seen it, but having passed perhaps far from it, how could he see it? If there was any road in the bottom or lower part of the river on the east side of the valley he never knew it. All the time that he traveled with wagons or carriages, he traveled on the east side following the hills. They were very low hills and there was no obstacle in crossing them, there were no deep canons or ravines, sandy up-hills only. When it rained the arroyos used to come down full of water. Sometimes the people used spades to fix up the roads to cross those arroyos. As they approached Alamitos where they stopped when the oxen were lost, there was no brush, just grass, all kinds of grass and grama grass. When they stopped at Duraznito to fix the carts they watered the oxen in the river. Being asked how many oxen there were in that caravan, he answers, that there were about 100 carts and his father was in charge and used to attend to the men as if they were soldiers, and said that there were 118 men in the party. Between White's Ranch and Alamitos the river made bends as the hills made slopes, it made bends at the foot of the hills. He cannot tell much about the bends of the river as he was inside of the cart, but what he knows is that the river was very near the road. Don Eugenio requested him to go and see if he could find out anything about the old river and he says he cannot do anything about that now because everything is settled so that he cannot find out anything, what he could notice is that at many places the railroad track is now where the old river used to run. He does not know that he would be certain as to the river-bed there because at that time it was a desert and now there

has been a great change in the land itself. Being then asked in Question 301 how he is able to say that the river ran where the railroad now runs unless he can see the river-bed, he answers, because he sees where the hills are now and where the railroad track is now and he judges by that. Being told in Question 303 that as a boy he had no real object in locating the river, he answers only places that he could know where he used to camp. He is absolutely certain as to Alamitos, Duraznito and White's Ranch as they stopped at those three places. At White's Ranch there was nothing to mark the place. He only remembers that the road passed there and there was the Muleros Ford and the hill there and the river was running next to this hill. The road followed the edge of the hills and as you got to Muleros Ford you had to climb up a hill. He heard it called the Muleros Ford. He does not know what they meant by it, he never crossed that ford. When they were camping with the sheep opposite Duraznito two horses ran away and Don Nestor and two other boys came after them and he said that they had overtaken them near El Paso and that the horses had crossed near the Muleros Ford, to this side of the river. From Duraznito to White's Ranch in the early days the river made some little bends, but it always came near the hills. The farthest distance of the river when on the other side would be about four or five hundred yards, and at that place there were some tracks that could be seen, but they could not travel there because it was very muddy and that was the reason they always took the hill road. If it had not been muddy, he certainly could have followed the tracks of the wagons by crossing the ancones where the river was far off. The tracks seemed to be wooden-wheeled cart tracks. He heard it said that the people from El Paso used to go frequently to bring poles from up the river. He does not know how they brought them. Being asked in Question 313, if they gathered the poles on the east side of the

river, he answers, on the west side of the river. There is where there were the only bosques in that direction. The tracks on the east side of the river he thinks were made by people from El Paso who went up there after poles. In the year '55 he saw men go to the neighborhood where he lived to bring poles by rafts in the river. He did not know Canutillo in '56 but he had known it before. He first heard the name Canutillo when he came after the girl. Then at that place where they overtook the thieves, his father said, "This is Canutillo". He does not know how it got its name. He did not see anybody living at that place during the trip that he made. He does not remember if anybody lived at that place in '56, nor if anybody lived between White's Ranch and Alamitos. He does not remember if anybody lived between White's Ranch and where Las Cruces now is up to the year '56. In those Indian days if somebody had lived in that desolate country, he might remember if he had seen anybody there, but he does not believe they could pay any attention to those things as they were trying to avoid the Indians and were traveling fast. When they were traveling on horseback they traveled in the night. He does not remember the name of Chapo Reyes at that time, but lately he has heard the name. He did not know Doroteo Salado Being asked, if he did not see a cattle ranch between Canutillo and Alamitos about that time, he says, that in one of the horseback trips he saw here and there a cow on the road, but he did not see anybody herding the cattle. He has not seen anybody at Alamitos. In '49 he saw a jacal there and he thinks it was a post. He is then asked if he didn't hear about that post since he has been a witness in this case, and he says, no, they have said nothing to him about it. Since he came to El Paso he has not had any conversation with anybody in regard to this business, but Mr. Van Patten asked him some questions sometime last week. He has talked to Mr. Reber about the case a few days back. Mr. Reber asked him

if he knew the marks of the valley about that time, and he told him, yes. Counsel then in Question 341, asks if Reber helped to remind him of some of the old things that he had forgotten, and he answers, that he only asked if he remembered, but he did not ask him anything about Tres Alamos. All that Mr. Reber asked him was if he remembered and he never mentioned any particular place to him. He only asked the witness if he remembered about the currents of the river at those times, and on which side did the river go to, and he told him that the question between Texas and New Mexico was as to how the river ran at those times between Alamitos and White's Ranch and he told him it was a dispute between Texas and New Mexico, a suit pending for a tract of land, but he does not know where the land is. He only told him that there was a suit pending between Texas and New Mexico for a certain tract of land, but he did not mention as to any particular place, stopping place, or monument, and asked him if he knew the marks of the river—the currents of the river at those times. The same questions were asked him through a letter from Mr. Chaves, whether he knew how the river ran at those times between Alamitos and White's Ranch. Since he has been here Mr. Chaves has had frequent conversations with him as old friends and old acquaintances, but as to telling him, the witness, as to those places and the others, the stopping places, he has not done it. The witness knew at home by other men that came over here that they were investigating other witnesses about this question, but he does not know what any of them testified to. He is then asked if he is to be paid for his testimony, and he answers, no, they are not going to pay him anything for his testimony. He does not know anything about that. So far as he understands they will pay him for his time as he came here at the request of Mr. Chaves, but so far they have not offered him a cent for anything. He believes they will pay him for his time, but if they do not want to pay him any-

thing, he will be perfectly satisfied as he is not testifying as to any particular interest but what his conscience tells him to testify only. Counsel then asks him how much does he understand he is to receive for his time, and he says he does not know and that none of these gentlemen has ever said a word to him as to what they are going to pay him. He has not talked to any of the other witnesses as to what they paid them. He is satisfied that they will treat him fairly and his conduct will be that of an honorable citizen. He says he is a very independent sort of a man and his opinions are free and true and all that he testifies to is what he knows positively. He knows what regard he has to give to his oath and the dignity in which he has tried to live all his life.

On re-direct examination, he says that the thieves who stole the girl were from Mexico. They were fine looking boys, they were servants of his father for about two years and they were very young. He is then asked if they compelled the girl to go with them or did she go willingly, and he answers that when she saw them, when they overtook them, she came running to him and embracing him crying, and he asked her how she came with them, and she answered, that they threatened her, that one of the boys threatened her with a knife and compelled her to go. In that first trip in 1844 there were other boys with the caravan, 7 or 8 boys about his own age. While they were camped at Alamitos the boys used to go from the camp to the river to swim, and then right back to the camp; they were afraid to stray off far from a fear of the Indians. Being then asked about the grama grass he says that the bottom land grass is a kind of a salt grass but the grama grows on the hills and never grows in the river bottoms, and of all the grass, the grama is the best. He came to visit his cousins at San Ignacio before he was married, but he does not remember if it was more than once. His cousins used to go from San

Ignacio to visit them also at his home. In Question 375, he is asked if he would permit any one to tell him what he should testify in this case or in any other case, and he answers, that he would treat him very badly and would knock him out of his presence very quickly. If a man would dare to approach him and tell him what he should testify, he would quickly run him off. Nobody has ever attempted to try to get him to say something which he did not know. He is a farmer and has very good property. It makes no difference to him whether he receives any pay for his time or not. Nobody has said anything to him that they are going to pay him anything. He has made his living all his life by his work and his intelligence. He is then asked if he can read and write in Spanish and he says, yes, that he does not write very well now because he is nearly blind and reads poorly, but he has written so much all his life that he can write with his eyes closed and he writes on a piece of paper a sentence which the interpreter says means "I am an independent man", and a reproduction of this will be found after page 3120 where it is marked 5234, and is plaintiff's Exhibit No. 25.

On re-cross examination, he says that he did not come for the hope of any pay or money reward; and is then asked in Question 381 if he came because of his great friendship for Mr. Chaves, and he answers, "Yes, sir". And counsel then tells him that Mr. Chaves is the gentleman who has been interpreting his testimony and he says, "Yes, sir". He then adds that he wants to say something else, that if it had not been for the good harmony that has always existed between Mr. Chaves and himself, he would not have come at all unless he had been cited by the orders of the court.

This completes the testimony of the aged witnesses who testified about the location of the river from their personal knowledge and it may be well to revert to the testimony of

CHARLES L. POST

which begins at page 1758 of the record.

He says that he is a surveyor and civil engineer and he states at some length what had been his education and experience, being at present county surveyor of Dona Ana County, New Mexico, a position which he has held since 1905, and he is also a United States deputy mineral surveyor. He took a degree of Master of Science at college. He has been employed by New Mexico in the preparation of this case and was so employed about the first of July, 1912, and he corrects this a little further along and says it was about the latter part of August or first of September and the first work he did under that employment was on the 16th of September, 1912, which work consisted of going over the line of the river-bed of 1850 with various witnesses and he gives the names of ten witnesses. Colonel Van Patten accompanied him and the witnesses on that occasion. They met at the house of Jose Enriquez and from there went to Anthony, New Mexico, and the witnesses were informed by him that the purpose was for them to point out the river-bed of 1850 from Anthony to the state line, or to the canon just above El Paso. The first thing done was that the witnesses pointed out the location of Alamitos which was about 2,000 feet above the state line and about 600 feet west of the railroad track above Anthony, and they indicated that a man by the name of Scott had lived there and had had a corral and feeding station. From there the witnesses went in a southerly direction and showed the location of the river-bed where it crossed the present road running west from Anthony to the Chamberino district and in the town of Anthony they pointed out the

location of the road from Paso del Norte to Fort Fillmore, which ran approximately where the present store of the Valley Mercantile Company is, and at that point it is about 130 feet from the railroad track in front of the store. The witness then in some detail proceeds to tell what the old men showed him and the various locations which he marked as stations in his notes, and that at each bend in the river or change of a straight line, he set a post. They showed him the road from Anthony as following along the edge of the hills and crossing the railroad track about 600 feet above Tres Alamos. He says that all the witnesses walked along this course and indicated the different bends in the river and pointed out the location of the house of Pena and the Calero de Guadarama which he believes they indicated was Gualdarama. To attempt to follow this testimony in detail would be a waste of time and it may be shortened by saying that the witness testifies that he made a survey upon the information which they gave him as to the location of the river and other places, which survey was made in October and November, 1912, most of the work in October. When he made the survey he found all the stakes which he had driven into the ground in place; and he then made a map and the map attached to and filed with the bill of complaint in this case is a reproduction of the map which he made and shows correctly the results of his work; and then there was put in evidence a copy of the field notes which he made on the ground of that survey and the field notes appear on pages 1765 to 1776 of the record. He is then asked if he made a survey of the river from the Courchesne bridge to any point farther down the river, and he says that he did from the Courchesne bridge to the point opposite the international boundary monument on the line between New Mexico and the United States and there is then offered in evidence the field notes of that survey which appear from pages 1776 to 1778 of the record.

We are at present considering the correctness of the location of the river made by Mr. Post based upon the information given him by the old witnesses, the testimony of most of whom has been taken in this case and is hereinbefore condensed; and while there is much in the testimony of Mr. Post bearing upon other matters which are in dispute, we will at present limit our statements as to his testimony to that location of the river. It appears from his testimony at pages 1759, 1789 to 1796, that he went over the location of the river with different parties of old men at least seven times, although many of these expeditions were after he had prepared the map which was used in connection with the bill of complaint, but these examinations only confirmed and corroborated the correctness of the location which he had made and which appears on that map. At this time particular attention must be called to a corroboration of the correctness of the location of the river by the old men which is derived from statements in the printed copy of so much of the Clark survey of the boundary between the United States and Texas as has been preserved and is printed in Senate Executive Document No. 70 of the First Session of the 47th Congress. This whole report has been offered in evidence and any portion of it may properly be referred to in this brief and in the argument of the case. Mr. Post testifies at pages 1778 and 1779 that at the time he made his map he knew nothing about the Clark boundary survey and had never seen any of his notes and did not know that the field notes existed. In the latter part of December, 1912, at Santa Fe in the office of the surveyor general, he first saw the Clark field notes as they appear in the document above referred to and on page 1779 there is a statement by the Attorney General of New Mexico of the understanding between counsel as to this report, the understanding being that counsel on either side could at any time thereafter, in brief or argument or otherwise, make use of anything to be found in

that report without encumbering the record with the report in full. It appears from the Senate Document above mentioned that before Mr. Clark was able to complete all of the office work of his survey including the maps, some friction having arisen between him and the commissioner of the general land office and the Secretary of the Interior, he was compelled to turn over all of his records in an unfinished and incomplete condition as will be seen by reference to pages 306 to 309 of the Senate Document and this fact will account for certain errors and uncertainties in the record of his work. It sufficiently appears, however, from the imperfect record preserved, and it ought to be said at this point that a most careful and extended search in the Department of the Interior fails to discover the original of Mr. Clark's record, many of the obvious defects in the printed document being attributable to possible typographical errors and disarrangement of portions of the record. It appears, however, that Mr. Clark was instructed by the Secretary of the Interior as shown on page 264 of the Senate Document, to begin his work on that portion of the boundary which was divided by the 32nd parallel of north latitude and accordingly his work began on the 32nd parallel at a point east of the Rio Grande, the river itself being the boundary south of that point. It will be seen that the course of his survey was then to the east and at pages 301-2 of the Senate Document there is a description of his monuments on the 32nd parallel from which it appears that the initial point was a pyramid of stone with inscriptions on all sides and that it stood 600 feet from the bank of the river and between them lay the road from El Paso to Fort Fillmore. The old witnesses pointed out to Mr. Post the location of that road and it is shown on his map as running through the town of Anthony where the 32nd parallel runs east and west through the upper part of that town. On December 31, 1912, Mr. Post went to Anthony with his instruments and a copy of the Clark

report and set up his instruments on the east side of the railroad track as he states near the foot of page 1779 and by reference to the bearings shown on pages 16 and 17 of the Clark report he identified Clark station one. At the point where he first set up his instrument he could not verify the bearings exactly though they corresponded closely and then he moved his instrument to the north about forty or fifty feet and found that the bearings on the different mountain peaks corresponded very closely and as he says he knew that he must be very close to the station one referred to in Clark's notes and at that point he saw a stone sticking up out of the sand and found that his instrument was practically over that stone. He finally began to dig into the sand and unearthed about 14 stones from 6 to 12 inches in diameter within a radius of six feet, and then he dug around in the vicinity outside of the stones and was unable to find any outside of that radius of six feet and concluded that that was the mound of stone marking the location of that station. At page 301 of the Senate Document already referred to Clark gives the location of five monuments on the 32nd parallel, four of which he says can be seen from the road along the valley. It may be said here without going into details that Post identified all of those monuments and their visibility from the road in the valley, assuming that his identification of station one means the same thing as the initial point mentioned by Clark at said page 301. It may be well to say here that this is disputed because the notes do not say that there is a monument at station one, but the notes fail to give any other description of the initial point which as Clark says was 600 feet from the river. Mr. Post testifies near the foot of page 1786 of the record that the distance from the station one of Clark's survey and the bank of the river as pointed by the witnesses was 600 feet, but he adds to this an explanation that at a point 600 feet from station one there is not a well defined river bank there having been a wash from

the hills, the wash being located north of Anthony and came in and filled up the old river-bed and that he found the distance from station one to the center of this old river-bed which was the beginning point of his survey according to the witnesses, to be 843 feet, but he further says that while the banks were not clearly defined at the point 600 feet west of station one, yet a continuation on both sides of the banks from above and below would fall very nearly to this point and he then refers to the significant fact that the old road to Fort Fillmore as pointed out by the witnesses falls between station one or monument one and the river and is about 130 feet west of the railroad track.

As already indicated there are other matters in Mr. Post's testimony which should be considered in connection with another branch of the case and no further space will now be taken up with Mr. Post, the accuracy of whose work is, however, in great part conceded by the principal engineering witness who testified on behalf of defendant as will be seen by reference to page 2454 of the record.

The attempt which has been made at a condensation of the testimony of the witnesses called by plaintiff as to the location of the river in early days has not been as successful as might be desired owing in great part to our desire fully to exhibit the nature and character of that testimony including everything which might appear to militate against the complainant's claims and in great part to the very extended and discursive cross-examination to which each of them was subjected. In the hope, however, of being of real assistance to the court in the consideration of this testimony we will now try to present a summary of that evidence in as brief a form as possible.

Felipe Madrid, whose testimony begins at page 41 of the record. Born at Paso del Norte; went to Mesilla in 1850; was 12 or 13 years old at the time of the

Mexican war; lived at Santo Tomas from 1852 to 1864 when river put them out, and from that time has lived at Las Cruces. The river was near the hills on east side of valley and road was on hills No change in bed of river until 1864; was married in 1860; had familiarity with old river; has showed the old river to a surveyor and Van Patten. Speaks of "this boy Perea" who, at page 131, says he is 70 years old.

At page 57 confuses Civil War with Mexican War under cross-examination which was long and wearisome, but ineffectual.

Mariano Colmenero, whose testimony begins at page 87 of the record. Lives at Ysleta; is an Ysleta Indian; became acquainted between El Paso and Las Cruces at age of 7 or 8 years when he went with his father to take care of the oxen when going in October every year to buy corn with earthenware; (these Indians are noted for their pottery); heard of raising of flag at Mesilla when he was 10 or 12 years old; (the flag was raised at Mesilla in 1854); remembers hearing of Mexican War but was then very small; shows familiarity with river when he was young; is 68 years old; has showed the old river to Mr. Post, the surveyor, and Mr. Van Patten with other witnesses.

Eligio Perea, whose testimony begins at page 131 of the record. 70 years old; born at Paso del Norte; went to Mesilla in 1850 when 6 or 7 years old; between 1850 and 1860 became well acquainted with country, coming every year to fiesta at El Paso; river from Alamitos down was near hills on east side of valley; has showed the old river to a surveyor and Van Patten with others.

Cornelio Lopez, whose testimony begins at page 155 of the record. Lives at Dona Ana; was born at Paso del Norte; was about 18 years old when flag was raised at Mesilla (which was in 1854 and this would make his birth

about 1836, and his age in 1913 about 77); first went up the river to Dona Ana when 10 years old, and thereafter came down to El Paso many times; has recently showed the old river to a surveyor and others; he does not know when the river changed below Alamitos.

Margarito Lujan, whose testimony begins at page 173 of the record. Born and has lived at Dona Ana; 71 years old; began to travel down to El Paso and up the river when 11 years old (that would be in 1853); came every 6 months to El Paso, in August and December; river ran against the hills on the east side; road was on the hills because river was below; shows familiarity with places along east side; Canutillo Grant was on west side of river; his father told him grant belonged to them; has showed the old river to surveyors and Van Patten.

Jose Maria Ramirez, whose testimony begins at page 208 of the record. Born at El Paso; left there in 1852 and went to Mesilla when he was about 12 years old, where he lived until he enlisted as a soldier for 3 years in 1863; after that lived at Tularosa until 1894, when he went to Dona Ana; well acquainted with river before 1863; came to El Paso almost every year; road went over hills on east side because of river below; last June he showed the old river to a surveyor whose name sounded like Steen, with other witnesses.

Reyes Marquez, whose testimony begins on page 232 of the record. Lives in Dona Ana; 82 years old; born in Senecu'; father took him to Dona Ana when 11 years of age; remembers it well; (that would be about 1842); when 21 years old made many trips to Paso del Norte; two or three trips before that; river was on east side of valley; road went on hills because river was next to the foothills; recently showed the old river to Steen, Van Patten and Reber with other witnesses; shows familiarity with old river. On cross-examination he appears to say

the river was at Piedras Paradas (p. 250) but on re-direct at page 254 he says he crossed the river at the Muleros Ford, above White's house, a long distance from the Piedras Paradas, and on re-cross at pages 256-7 he says the river was far from the Piedras Paradas in the early days and he flatly denies that he has said the river was near the Piedras Paradas. (The river is there now and probably has been ever since the river broke through west of Mesilla and left that town east of the river.)

Catarino Barela, whose testimony begins on page 258 of the record. Lives in San Miguel; born at El Paso; went to Las Cruces when 14 years old; before that had been up and down the river many times with his father to sell earthenware which his mother made; is an Indian; after he went to live at Las Cruces at age of 14, traveled many times to El Paso and back; was almost a grown man when the flag was raised at Mesilla (which was in 1854); became well acquainted with east side of river, which was near the hills; went with a surveyor and other witnesses to show where the old river was; says he is 78 years old which makes his birth about 1835.

Julio Rivera, whose testimony begins on page 290 of the record. Born at Ysleta; 70 or 72 years old; became acquainted with river above Canon when 12 to 14 years old; was small, about 7 or 8, when he heard of flag raising at Mesilla (which was in 1854); went up and down the river frequently; the river ran to the east side; went with Van Patten and a surveyor and others about two months ago to show where the old river ran.

Juan de Dios Sais, whose testimony begins on page 331 of the record. Lives at Chamberino; born at Carrizal, Mexico, in 1832; when one year old was taken to Socorro and at 5 or 6 years of age moved to Dona Ana; then went to Mesilla when 10 to 12 years old; afterward went to La Mesa when grown up; lives there yet between

Chamberino and La Mesa; when he had been married two or three years, lived at a ranch for 3 years west of Canutillo or Duraznito, after river changed at Mesilla; traveled frequently down and up the river bringing corn to El Paso; carries the mail between Anthony and Chamberino and has carried it for 12 years; went with others twice to show the old river to the surveyor, Post, and Van Patten from Alamitos to Muleros; the first time he got sick and turned back from Old Canutillo; but later he came again; surveyor put stakes in old river bed; was already a man when the river destroyed Amoles. (He must have been then over 30 years old.)

Jacinto Perea, whose testimony begins on page 346 of the record. Lives in Chamberino; born in 1849 in El Paso; when one month old parents took him to Dona Ana where he lived 8 years; then went to Mesilla, where he lived many years; then went to Chamberino and lived there until now; first came down to Paso del Norte when 6 years old; traveled down and up enough to become well acquainted. (This witness is not as clear as others but shows considerable knowledge of the river.) Has recently showed the places along the river to a surveyor and Van Patten with other witnesses. His knowledge of the east side of the river appears to be referable to only two trips with his father when he was 6 and 8 years old. He says the Estero de las Sanguijuelas was where New Canutillo now is, but no other witness says so; and he says the Arroyo de Frijol is on the east side of the river while all others who testify about it say it was near the hills on the west side of the valley. He evidently did not know as much as he thought he did, but his showing of the river may have been better than his oral testimony.

Claro Lucero, whose testimony begins on page 388 of the record. Born at El Paso, August 12, 1835; went to Mesilla in 1851 in June or July and was there when the flag was raised (in 1854); came with his father in Oc-

tober to Paso del Norte to receive crops each year until his father sold his land in 1853; came each year to the fiesta in December; usually on the east side and knew the place well; river was near the eastern hills; has showed the old river to the surveyor Post; Mesilla was established in 1850; remembers American soldiers in El Paso when he was about 10 years old. (Doniphan reached El Paso in 1846.)

Agapito Marquez, whose testimony begins on page 426 of the record. Born at Tome, N. M., in 1836; came to San Ygnacio before 1850, when about 12 years old; was there 7 years and then went to La Mesa where he left his mother and came back to White's Ranch and worked for White farming, for four months; was well acquainted with river even before he worked for White taking care of cattle; shows acquaintance with all places from Alamitos down to Piedras de Amolar and Muleros; river was on the east near all of those places; there was no change in the river between Alamitos and White's Ranch before the change at Mesilla; knew Amoles, far from river. Showed the old river recently to Van Patten, to Attorney General for New Mexico and to surveyor Steen.

Longino Mestas, whose testimony begins on page 470 of the record. Lives at Bosque Seco, below Mesilla or near there, since he was 7 years old; born at Tome, New Mexico; came to Santo Tomas when 3 or 4 years old; began to know the river when he was 7 years old, on west side; river ran at Alamitos until it changed over at Picacho (Picacho is above Mesilla); knew Alamitos, White's house and Salado's house and Estero Redondo de las Sanguijuelas and Piedras Paradas; river was near hills on east side; was night watchman at the dam thrown up to prevent the river coming through from Picacho, when river broke through at Mesilla and destroyed Santo Tomas and Amoles; was then 15 years old; it was at the time

of trouble between Texas and United States; it was in 1864 or '65 when the Texans went away; before that change there was no change in the river between Alamitos and White's Ranch; has showed old river to surveyor Steen. Did not know La Bruja but knew Alamitos, White's house, Salado's house at Canutillo and the Estero Redondo de las Sanquijuelas and the Calero de Gualdarama; there was bosque on west side of river up to Chamberino far to the north.

Jose Hidalgo, whose testimony begins on page 511 of the record. Lives at Dona Ana; is 80 years old; born at El Paso; left there at age of 13 and came to Aguapa near Magoffin's Fort and lived there 18 years, making many trips up the river to see his sister in Dona Ana and at times with freight; then went to Dona Ana to live and has lived there 48 years; traveled on east side only; knew Alamitos where river was very near; knew Canutillo; Doroteo el Salado lived there very near the river; knew Duraznito, a stopping place for water; knew White's Ranch; the house was near the river; did not know Estero Redondo de las Sanguijuelas nor the beaver dam nor the Bosque de la Artesa, only knew watering places. On cross-examination he did not know house of Gualdarama nor La Bruja; river ran near places mentioned many years; recently about three months ago saw river with Van Patten, Reber and a surveyor and others, and all showed the river of early days; was married in 1846; on re-direct says he showed Van Patten and the surveyor where the river was at places he knew and other witnesses showed where the river was at other places.

Leandro Benavides, whose testimony begins on page 533 of the record. About 72 years old; born at Belen, New Mexico; came to Las Cruces about 11 years old in 1852; when flag was raised he lived in Santo Tomas and went to see it; before that had come to Paso del Norte

with his father and saw White's Ranch and Salado's ranch; river was very near White's house and was near Salado's house; he knew Duraznito.

Later knew Estero Redondo de las Sanguijuelas, near which was the river; did not know La Bruja; knew Alamitos; did not know Bosque de la Artesa; showed the old river with other witnesses in August to Van Patten and surveyor Steen.

Calistro Tarin, whose testimony begins on page 567 of the record. Born in Ysleta and lived there until 10 years old when he went to Las Cruces for three months and came back and remained nearly a year when he went to Las Cruces for 6 days and then to Mesilla to work for Miguel Arias; stayed at Mesilla until he enlisted as a soldier after battle of Valverde; served 2½ years; is about 72 years old; when he went the first time he left Ysleta in the morning, rested at White's house and traveled all night reaching Las Cruces early next morning, on horseback; river was very near White's house; knew Alamitos and river was very near; no houses there; revisited old river 2 months ago with a lawyer, a surveyor and Van Patten and showed the old river to the surveyor, river ran where bridge is now at New Canutillo; from there down it was near the hills; Salado's house was near the river; from there to White's Ranch the river ran near the hills.

Eugene Van Patten, whose testimony begins on page 617 of the record. Lives at Las Cruces; is in his 74th year; was born at Rome, New York; came to El Paso in the spring of 1857, about 17 years old; lived there at that time about 2 years during which he was conductor on the Overland Mail and part of the time was road-master; then went to Mesilla where he was distributing agent for Apaches under Indian agents; in 1861 went into Confederate Army and served nearly 4 years; then went

to Texas and came back and lived about 4 years in what is now called Juarez; then he lived at Amoles about 8 months, and then at El Paso about a year, when he went to Las Cruces and has lived there ever since; has been sheriff of Dona Ana County; and county judge, register of United States Land Office and has held other offices; has been Colonel of New Mexico Militia; as conductor of Mail line, his run was from El Paso to Tucson and back, taking 8 to 10 days and sometimes more for a round trip; they had a station at White's Ranch, another at Alamitos, another at Mescalitos, another at Tortuga and one at Mesilla. He gives names of 11 other stations between Mesilla and Tucson, his duties being to inspect all stations, the stock and coaches, attend to blacksmithing, shoeing mules and everything pertaining to the business; he describes the road from El Paso to Alamitos, showing it to be the same road others testified about, as on the hills above White's Ranch; shows great familiarity with the river which was on the east side of the valley near the hills, and with the valley on both sides of the river; in 1862 there was a big rise in the river and he was at Mesilla in the First Arizona attached to Sibley's brigade with 3 or 4 Texas regiments, and the soldiers helped to keep the flood from coming into Mesilla; but in 1864 a still larger flood came and ran west of Mesilla so as to change it to the east side of the river and washed away Amoles and Santo Tomas and has run there ever since; from Sanguijuelas for some distance the river runs where it did when he first knew it; it started back from the western hills in 1884; at New Canutillo it runs now about where it did when he first knew it; at several places the railroad now runs in the bed of the old river. The direct examination of this witness begins on page 617 and ends on page 631, and the cross-examination begins on page 631 and runs to page 736, and elicited the facts that he had been employed by complainant to find witnesses and that he had made many trips up and down the

river with witnesses and the surveyors Post and Steen, one or both at a time, but his testimony in chief was not seriously affected—rather strengthened by showing the extent of his knowledge. That cross-examination is somewhat interesting, extending as it does to many matters entirely outside of his direct examination and outside of the issue in this case. His re-direct examination covers 6½ pages, and his re-cross examination about 17 pages. The attention of the court is invited to the unpleasant controversy between counsel about excluding Colonel Van Patten from the court room the first of which appears on pages 761-2 of the record, and the remainder on pages 770 to 773, and I wish to say, as the record may not show it, that Colonel Van Patten thereafter voluntarily kept away from the court room evidently feeling resentful and injured on account of the unjustifiable attack made upon him.

Nestor Albrides, whose testimony begins on page 762 of the record. Has no fixed residence; was born in Socorro, Texas, in 1831; is entirely blind and has been for 8 years; lived in Socorro 20 or 21 years; then went to Mesilla which was settled in 1850; he then says he went to Mesilla in 1854; and later that he went there to live in 1860 or 1861; knew Amoles in 1849 when he was cutting wood to take by the river to El Paso, in rafts; at that time soldiers were camped at Alamitos on the opposite side of the river; knew then Alto de la Bruja, Sanguijuelas, Canutillo where he saw jacales, Duraznito, White's Ranch, Piedra de Amolar; they followed the river all the way; they passed the beaver dam which divided the river into two branches, the larger on the east side; he rafted wood in 1849, 1854 and 1860; in 1849 they put rafts in the river opposite Alamitos where the soldiers were, and in the same place the other times; traveled road on east side only once; the river changed at Mesilla from east to west side in 1864, but in 1862 when Texas soldiers came, there was a great flood which was stopped

by bordos made by the people on the north side; the soldiers helped make the bordos; was 15 or 16 years old at the time of the Mexican war; there was no town of Amoles in 1849 only the ranch of Garcia where the wood was cut; and only that ranch the other times. (There is some error in this; Jesus Enriquez, born in 1844, son of Juan Simon Enriquez, one of the settlers of Amoles, testifies at page 1738 that he went there when 6 years old when the ditch had been constructed.) He tries to describe a change in the river below Canutillo, towards Duraznito, which took place between 1849 and 1854 by which the river left a bosque to the west side; on re-direct he says that in 1860 he followed the same channel as in 1854. He shows the river to run on the east side of the valley.

Severo de la O, whose testimony begins on page 799 of the record. Lives in Dona Ana; born in 1844; and has lived there from 1857, when he was less than 7 years old; came down again 7 years later; then he says he came down in 1857 when he was 14 years; but on cross-examination at page 806 he says he first went up in 1851. His testimony about the river is of 1857; he shows great familiarity with the east side of the river, which ran against the hills; within the past year, he has gone with Reber, Van Patten and Steen, a surveyor, to show them where the river had run in 1857 when he knew it, and he showed all the places to Steen; in 1866 he was at Alamitos but could not see the river as it had already changed its course.

Faustino Acuna, whose testimony begins on page 832 of the record. Has lived in Alamogordo for the last 14 years; born at Paso del Norte; is 72 years old; lived at Paso del Norte until he was 25 or 30 years old; went to Amoles with his mother who went every year to buy corn and other things, about 4 times beginning when he was 12 or 13; she sold things to eat; they sometimes

went twice in a year, on the west side of the river; traveled 2 or 3 times on east side of the river; describes route on west side; at Piedras Paradas, the river was far to this side and could not be seen on account of the bosque. Muleros was a stretch of country from White's house up; along the Paseno Road, after passing the Piedras Paradas, the river could not be seen except where they watered the oxen and then they went very far from the road; knew Alamitos below which river ran near the hills; knew the place now called New Canutillo, Uranguena, Salado's house, Duraznito and White's house; the river was near the hills; has been recently with Post, a surveyor, and Van Patten and showed them the river where it used to run before. When at Amoles he went with boys to water the oxen at the river quite far from Amoles; was 17 or 18 when he went on east side, about 1857. At page 848 he says, "It happens that I remember things better, now, that happened when I was a boy, than things that happen to me now when I am an old man". He went once, when he was 13 or 14 years old, with his brother to help raft wood down the river; he could not help much but he cooked for his brother. As samples of the wearisome and ineffectual cross-examination to which these old men were subjected, attention is called to the testimony of this witness at pages 869 to 874 of the record, and to the testimony of Santos Alvarez at page 898.

Santos Alvarez, whose testimony begins on page 882 of the record. Lives at Dona Ana; is 71 years old; was born in El Paso, Mexico, and went to Dona Ana when about 6 years old and has lived there ever since; does not remember anything of that first trip; he made a trip down to Paso del Norte with his mother when 13 or 14 years old and stayed there a few days only, then went back to Dona Ana, coming and going on the east side of the river; made other trips to Paso del Norte after he was grown up. On cross-examination he was asked

if he was testifying on what he saw when he was 13 years old or what he saw later or both, and he answered, "Both times". He shows familiarity with the places on the east side of the river from Alamitos to the Piedras de Amolar, not including the beaver dam or the Estero de las Sanguijuelas, but he does remember an estero near the place now called New Canutillo, which estero was near the river and the road was on the east side and higher up; recently went with Van Patten and a surveyor and other witnesses and showed the surveyor where the river ran when he first knew it, from Alamitos down to White's house, between which two places he says that the river ran near the hills on the east side. As a curiosity on cross-examination attention is called to Question 282 on page 898 of the record, which was asked after he had said that he recognized a tree as one of the trees which he knew as a boy, the question being, "Which one of the cottonwood trees that you saw as a boy is this?"

Victoriano Duran, whose testimony begins on page 909 of the record. Lives in La Luz Canon in Otero County, New Mexico; was born in 1844 in Paso del Norte where he lived until 1850 and then went to Mesilla with his father, Juan Duran, going up on the other side of the river, and of that first trip he remembers something although he was very young, because he walked part of the way; he came back to Paso del Norte in 1852 on the east side of the river and stayed there about 8 months and then went to Mesilla again where they lived until 1864 when he went to Tularosa. (It should be said that Tularosa is near La Luz Canon where the witness now lives.) In the early years of his life he traveled up and down the river between El Paso and Mesilla on both sides and became well acquainted with the river and the different places; he first knew Alamitos about the year 1856 but he had seen it before in 1852; he became acquainted with Tres Alamos, the Calero de Gualdárama, La Bruja,

and a place called Las Sanguijuelas, the place now called New Canutillo, the beaver dam which divided the river in two branches, the principal one being that which ran against the hills, the two coming together again quite far below; he also knew Canutillo and the place called Duraznito and White's Ranch which was in front of Muleros and on the hills; he says that Muleros was a large stretch of country, and he also knew Las Piedras de Amolar. He also shows his acquaintance with the places on the west side of the valley as far up as Amoles which he thinks was destroyed after he moved to Tularosa; he was present at the raising of the flag at Mesilla. Cross-examination develops the fact that he had recently gone with a surveyor and Mr. Van Patten, three others from Tularosa and two whose names he does not remember, all to show the old river and that he and the others did show the old river. In 1858 during the 8 months he lived at Paso del Norte he used to go about every 15 days to take provisions for herders who were caring for cattle at a place called the Pelillar and the river was between that place and White's Ranch and was between Piedras Paradas and Santa Teresa. It seems however that these trips were not all in 1858 because he tells of coming from La Mesa down to the ranch from which many times he came to El Paso, sometimes on the west side and sometimes on the east side of the river; the river was very far from Amoles and near the hills; he passed by Amoles in 1864, and it was then destroyed and he thinks he did not say that Amoles was there up to the time he moved to Tularosa; in August, 1864, the river was running by an arroyo by Corral de Trosas and was running where Old Amoles used to be. On further cross-examination on page 925 of the record he is asked how many trees were there at Alamitos in 1852 but he answers that he did not count them, there were several; there were three men herding his father's cattle at the ranch on the west side of the river.

Sixto Garcia, whose testimony begins on page 975 of the record. Lives in Canon de La Luz in Otero County and has lived there 30 years, before which he lived in Dona Ana County; first at Picacho and afterwards at Dona Ana; was born at Socorro, New Mexico, and is 72 years old; left Socorro in 1853 and came to Mesilla when he was about 11 years old, with his father and remained in Mesilla until 1858; he remembers the raising of the flag at Mesilla in 1854; in 1858 he went to live in Picacho and lived there until 1872 and after that went to Dona Ana to live; in the same year he went to Picacho he came down to Paso del Norte on the east side of the river with his brother and remained there about three days and went back on the other side of the river; and after that he traveled some on the east side of the river and became acquainted with the river but there were various places he did not know by name; he shows his familiarity with the river on the east side from Alamitos to White's Ranch. He says that he has recently revisited Alamitos but the cross-examination clearly develops the fact that he with other witnesses recently went to show the old river. He remembers when the river changed so as to put Mesilla on the east side and says it started in 1862 and finished in 1864 when he was living in Picacho, and that La Mesa and all the towns below La Mesa and the old town of Amoles were destroyed.

Jesus Arvizu, whose testimony begins on page 1004 of the record. Has lived at Las Cruces since 1905 and before that at La Mesa to which place he came from Mesilla in 1863 and came to Mesilla at the end of 1853; his health is not good; he was born on July 23, 1840, at Frontera in the State of Sonora; he went with his mother and grand-parents from Frontera to Córralitos on a visit to his Aunt Isabel Luna and they did not return to Frontera because the Indians exterminated the village; his father was killed by the Indians at Pilares in Sonora;

he and his mother lived at Corralitos until they came to Mesilla in 1853 towards the end of the year, where they had a relative, Jim Lucas, who was married to a cousin of the witness, and sent for them after the mother of the witness became a widow the second time; in going to Mesilla they traveled on the west side of the river and he remembers only the Piedras Paradas; they slept at Amoles where there were quite a number of families, including Jose Maria Garcia and Simon Enriquez; he could not see the river from that place; he has recently seen the Piedras Paradas and they look smaller than when he first saw them; in 1855 he made a trip to Paso del Norte and made several trips to receive the rent of the land which belonged to his mother at Chamisal which was planted on shares and he came to receive their share of the crops until the river destroyed their land but he does not know what year that was although it was the year that the dam was destroyed; he thinks it was the same year when the river changed from the east side of Mesilla to the west of Mesilla; in coming and returning from Paso del Norte he traveled on the east side of the river and he not only came to get their share of the crops but used to come to the fiesta on the 12th of December and he became acquainted with Alamitos and other places along the river, and says that below Alamitos was a bend in the river which terminated at Tres Alamos where the river came exactly to the place where the railroad track now is; and there is a portion of the old bed of the river east of the railroad track. He shows familiarity with the river on the east side and cross-examination develops the fact that not long before he went with Mr. Baker, Mr. Van Patten and other Mexicans, some 12 or 13, and the surveyor, in December, and showed where the old river was, not far from the old road on the east side which ran over the hills; in this party there was an Indian in the lead who knew more than anybody, and he thinks his name is Dionicio but he calls him

Apache. (This reference is to Dionicio Parra whose testimony appears in the record beginning at page 1123, and who was not an Indian but in early life was a captive of the Apaches for about 7 years before 1850.) He had not seen any change in the river between Alamitos and White's Ranch until after the Civil War.

Antonio Garcia, whose testimony begins on page 1039 of the record. Lives at Mesilla to which place he came from Chihuahua in the early part of 1851; was born June 13, 1838; when he came to Mesilla in 1851 he went on the road called Fort Fillmore road on the east side of the river; he is a blacksmith and learned his trade in Fort Fillmore, beginning in 1852; the fort was then new and was not finished; he knew only one road from Franklin to Fort Fillmore; he came to El Paso in 1856 on horseback and returned on the same road and in 1861 he made another trip on the west side by Old Amoles but he became well acquainted with the river; in making those trips up and down to and from Fort Fillmore he knew Alamitos which was a stopping place, and has recently revisited that place; from Alamitos the river ran to Dos or Tres Alamos above which there was a small bend; Tres Alamos was near the hills on the east side; when he was there recently they came from Alamitos down the old river on foot to the place called Dos Alamos by some and Tres Alamos by others; he further shows his familiarity with the river on the east side down to White's Ranch, the old road running on top of the hills except when sometimes the river would go dry; the road came down at some few places; he shows much less familiarity with places on the west side of the river except at the old town of Amoles; he was at Fort Fillmore the day they raised the flag at Mesilla but he did not go there; he remembers when the river changed from the east to the west side of Mesilla, which was in 1862, but some water remained running between Mesilla and Las Cruces

until 1864 when it changed completely to the other side; the last time he saw the river near Alamitos was in 1866 but he did not travel that road after that time. The cross-examination shows clearly that he went with others to show the old river with a party which was made up in part of Mr. Austin, Mr. Baker, Mr. Chaves, Mr. Van Patten and Mr. Reber and about ten Mexicans more or less. This was one of the parties which showed the old river to the surveyors and this is practically shown in the cross-examination also.

Florencio Lucero, whose testimony begins on page 1069 of the record. Lives at La Union and says he is 96 years old and was born at Paso del Norte where he lived about 10 years and then went to Mesilla after Mesilla was settled; he then says that he was very small at the time of the war between Mexico and the United States. (At this point, as appears on page 1059 of the record, counsel agreed that he was not as old as he thought.) If he were 96 years old in January, 1914, he must have been born in 1817 or 1818 and would have been 28 or 29 years old when Doniphan reached Paso del Norte in 1846 and Mesilla was not settled until after the Treaty of Guadalupe Hidalgo. In many details his testimony does not harmonize with that of numerous other witnesses but it does definitely appear that he was one of the numerous witnesses who went with Van Patten and a surveyor to show where the old river ran between Alamitos and White's Ranch; he says that he was 14 years old when he went to Mesilla and had been living there about 4 years when the American flag was raised in 1854. He then goes on to testify to his knowledge of numerous places along the river and among other things says that he lived about 13 years near the place which is now called New Canutillo and that the river ran very near to his house. It appears in the record at pages 1074, 1076 and 1098 that this witness was quite deaf and that resort was had to a

hearing machine called a Deffone which did not, however, seem to be of great assistance. There are numerous other anachronisms in his testimony which are quite obvious when taken in connection with what he says about his age and about the time that he went to Mesilla and with known historical facts. His testimony in some important details, is quite inconsistent with that of all the other witnesses and he showed a tendency to assume that he had knowledge of everything about which he was asked which may have led him into some errors; but in matters of which he clearly had knowledge and memory, such as the location of his house near the river where he lived 13 years he harmonizes with the other witnesses and with the contention of complainant. On the whole, however, his testimony was not very satisfactory.

Juan Albillar, whose testimony begins on page 1098 of the record. Lives at Chamberino and was born at Ysleta; he heard of the battle of Temascalitos when he was at El Paso and was about 18 years old; he was in El Paso when the soldiers came from the United States but he does not know where they went or when they went away; when he left Paso del Norte he went to Mesilla; it had been settled for three years and he lived at Mesilla 4 years; when he went there he traveled on the east side of the river and while he lived at Mesilla he came to Paso del Norte twice each year for pleasure trips and to see his people and sometimes to the fiestas of Guadalupe in December and San Lorenzo in August, and traveled on the east side of the river; he knew the place called Alamitos and says that he knew Scott who lived where Anthony is now, and had a cattle ranch, and that Alamitos is about 6 miles from Anthony and below Anthony; he then says that he has recently revisited Alamitos and went by himself but he saw Mr. Chaves there and that Mr. Van Patten was with him and Mr. Chaves at Anthony, and that he went to a place above Anthony where the

old river used to run which they used to call the place of Scott; they went there on foot and from Scott's place they went below all along the old river. He shows that the river ran along the east side of the valley and that the road was on top of the hills and at places approached the river and in other places went away from it; he says that when he revisited the places up the river he was able to show where the river ran when he first knew it and that it was very visible; when he first went to Mesilla it was on the west side of the river but the river is now west of Mesilla; he remembers about the change in the river which was caused by the construction of a ditch to Mesilla by his uncle, Juan Pablo Albillar, and the river followed the acequia; he knew the old town of Amoles which was destroyed when the river ran west of Mesilla; there had not been any change in the river between Scott's place and White's Ranch before the change of the river at Mesilla; he first went up the river about a year before the flag was raised at Mesilla and he visited Old Amoles before the flag was raised at Mesilla and that was the only time that he was ever there; he does not remember how old he was when he left Paso del Norte but he was a grown man; when he went to Amoles the river was far to the east from Amoles. On cross-examination it was developed that he had gone with Van Patten, Chaves, Baker and Reber and some other witnesses, to show where the old river ran.

Dionicio Parra, whose testimony begins on page 1123 of the record. Lives at Las Cruces and was born at Casas Grandes in Mexico where the Indians captured him at the age of about 10 years and took him away with them; Costales was the name of the chief and they were Apaches; they kept him until he got away when he was about 17; at that time he was committing depredations just as they did but he was entirely free and was stealing just as much as they did; he left them at Santa Barbara which

is in front of Las Cruces and went to Mesilla where he arrived at a corn field and like an Apache imagined that that corn belonged to him and began to roast corn; he had two horses and Merejildo Guerra took him as his prisoner and turned him over to the president of Mesilla which at that time belonged to Mexico; the president was Don Rafael Ruelas who kept him in his house where there was a relative of his named Manuel Parra who was working there; he stayed there 4 years but not all the time but where ever he could get work at different places; when he arrived at Mesilla the settlement was being formed; when the flag was raised he had recently come from San Antonio having gone there with a wagon train of Santiago Magoffin; it was the end of 4 years that he left Mesilla for San Antonio on the first trip and when he returned from that trip the flag was being raised in Mesilla; he started from Fort Fillmore and came down to Paso del Norte and had been there once before, traveling on the east side of the river and after that he made a great many trips up and down the river on the east side; he shows great familiarity with Fort Fillmore and the east side of the river down to Paso del Norte, and that the river ran near the hills; he was there recently showing the places and he was ahead; he was not here when the river changed to the west side of Mesilla but was then a soldier in the regiment of Kit Carson and of Colonel Chaves engaged in war against the Navajos; he served 3 years and was discharged at Fort Selden; before he went as a soldier the river was at Alamitos and ran always by White's Ranch and over the same old river-bed which is there now. He knows that he was born in 1833 because when he applied for a pension he sent for his certificate of baptism. (This seems to corroborate his statement that he was 17 years old when he left the Indians and came to Mesilla which was then a new settlement and was really settled sometime after the Treaty of Hidalgo in 1848, probably in 1850.)

Dolores Alejo, whose testimony begins on page 1155 of the record. Lives now at Las Cruces but has lived more at Dona Ana; moved to Las Cruces about 15 years ago and before he lived at Dona Ana he lived in Senecu' near El Paso, where he was born and was about 18 years old when he went to Dona Ana which was after the flag was raised at Mesilla; at the time of the Mexican war he was living at Senecu' and saw some of the soldiers there; he heard something about the battle of Brazito but he says he thinks he was not as much as ten years old at that time; before he went to Dona Ana to live he had been both at Mesilla and at Dona Ana; it was a short time before because when they went to Dona Ana it was about the time that the flag was raised; he was at Senecu' when the flag was raised and that was after his first visit up there which was to go to the fiestas at Mesilla; on that first trip he went and returned on the west side of the river; the road went rather near the Piedras Paradas; it was the Camino Paseno; they stopped all night at the old town of Amoles; one could not see the river on account of the large bosques; before he went to live at Dona Ana he made several trips to Mesilla, going to sell things such as dried peaches and bunuelos and sopaipas; all his trips to Mesilla were on the west side of the river; but he went to the fiestas in Dona Ana before he went to live there, and traveled on the east side of the river once or twice and became well acquainted with the places and the river on the east side; he shows his familiarity with that side of the river from Alamitos to Piedras de Amolar; he went with Van Patten and a surveyor and 4 Mexicans who are witnesses, to show where the old river ran; he knew when Van Patten first came to the country and says they are about the same age; before the river changed at Mesilla it did not run near the Corral de Trosas nor the Corral de Tapia nor the Piedras Paradas; after the river changed at Mesilla he did not see the river at Alamitos any more but it

ran there before the river changed; he heard that the old town of Amoles was destroyed by the river at the time when the change at Mesilla took place. The attention of the court is invited to Questions 337 and 338 and the answers of the witness thereto, on page 1173 of the record; he says that he was about 7 years old when he heard of the battle of Temascalitos or Brazito. (That battle was in 1846.)

Pedro Benavides, whose testimony begins on page 1189 of the record. Lives at Las Cruces and has lived there over 50 years; before he went to Las Cruces he lived at Paso del Norte where he was born; he was taken to Dona Ana when he was about 7 or 8 years old but he remembers something of that trip; he made six or seven trips up the river before he went up there to live, and traveled on the east side of the river; when the flag was raised at Mesilla he was at Paso del Norte but had been at Mesilla before, two or three times; he was at Mesilla two or three years after it was settled and was about 16 years old when the flag was raised; in the trips which he made he became well acquainted with the road and the river and the places along the river; he knew Alamitos, Alto de La Bruja, the Estero de las Sanguijuelas, the place now called New Canutillo, but he never saw the beaver dam; he knew Doroteo Salado, who lived at Old Canutillo and he knew Duraznito which was so called because a peach tree grew which he saw when it was already dead; it was close to the river; he knew White's Ranch near which the river ran; there were several places where the railroad is now that the river was formerly; he remembers when the river changed to the west side of Mesilla which was before the soldiers from Texas came; after the river changed at Mesilla the main current was on the west side; he knew the place called Amoles which was destroyed by the river; on the east side the road went over the hills because the river obstructed its going

below; he knew the Piedras de Amolar; he showed the old river to the surveyors with other witnesses; he thinks they were about 7. He further says that he is an Indian of the kind that were called Tame Indians. On cross-examination at pages 1221 and 1222 he is led into saying that after the Texans fought at Mesilla and went away, the river still ran at Alamitos and Tres Alamos and New Canutillo and at Salado's house where he had previously known it but he says that after that it changed but he also goes on more fully to tell about him and others showing where the old river formerly ran from Alamitos down to White's Ranch.

Juan Marquez, whose testimony begins on page 1238 of the record. Lives in Las Cruces; was born at Concordia and was taken in infancy to Paso del Norte, and to Dona Ana when he was about 9 or 10 years old by Jose Maria Costales, one of the original settlers of Dona Ana when there were only a few houses there; he lived in Dona Ana until he came to Las Cruces about 25 years ago; on that first trip he remembers only Alamitos and White's Ranch where there was a house and people living in it; after that he made a trip every year to Paso del Norte; when he was taken to Dona Ana, Mesilla had been recently settled; he remembers hearing of the raising of the flag at Mesilla and he was then in Dona Ana and was about 20 years old; he then says, however, that he does not remember how old he was when the flag was raised at Mesilla but he was grown up; he got acquainted with the stopping places along the east side of the river and when he first knew Alamitos there were no houses there but the river was very near; the road was on top of the hills; he identifies Exhibits 7 and 8 and 9 as pictures of Alamitos; afterwards there was a pole house at Alamitos and he heard it belonged to a man by the name of Scott; he became acquainted with Canutillo, Duraznito, White's Ranch, Tres Alamos, the place now called

Anthony, the Alto de La Bruja, the place called now New Canutillo and the Estero de las Sanguijuelas; on his first trip nobody lived in Canutillo but afterwards he saw houses there; he recently revisited that part of the river between Alamitos and White's Ranch and thinks there were about 12 of them in the party who went to show where the river formerly ran on the east side. He was married at Las Cruces when he was a little over 20 years old and when the Texans came he had been married one year and he is now about 75 or 76 years old.

Juan Apodaca, whose testimony begins on page 1281 of the record. Lives in Dona Ana and was born at Paso del Norte in 1840 from which place he went to Mesilla when he was 7 years old and lived there 3 years and then went to Dona Ana. He then says, however, that he was at Mesilla when the flag was raised and was then about 14 years old and went to Dona Ana a year later. As the flag was raised in 1854 this last statement seems to be the correct one; he remembers some of the places on that first trip up the river but came back in about a year; after the raising of the flag he and his brother made two trips each year taking fruit to Mesilla for sale which they obtained from his uncle at Paso del Norte, and traveled on the east side of the river. At that time Mesilla was on the west side of the river and they crossed the river in front of Mesilla. He became acquainted with the road and the river on the east side of the valley and the various stopping places and shows that the river ran near the hills on the east side of the valley. On cross-examination it is shown that he with other Mexicans went with Van Patten, Baker, Chaves, Reber and Austin to show where the river was between Alamitos and White's Ranch.

Vidal Minjares. His testimony begins at page 1322; was born in Las Cruces in 1847 and has lived there; when he was a boy he made trips down to Paso del Norte

and was about 6 or 7 years old when he made the first trip; he was at Mesilla when the flag was raised and his first trip to Paso del Norte was a short time after; they remained at Paso del Norte during the fiesta of Guadalupe and then returned to Las Cruces, traveling on the east side of the river both ways; he remembers at that time Los Alamitos, Canutillo and White's house; he moved to Tularosa when he was about 17 or 18 years old and up to that time they used to come to the fiesta to Paso del Norte every year, and during those trips he became better acquainted with the roads and the river and the various places, and knew the place which is now called Anthony but did not at that time hear of Tres Alamos. He knew the ranch of Salado and knew the height which he has recently learned was called La Bruja which is below the place called Tres Alamos; he knew also the Estero de las Sanguijuelas, the place which is now called New Canutillo where there is a bridge, and he knew the beaver dam where the river divided in two branches when the river was high; he knows the place called Duraznito now but at that early time he did not hear the name of it although he knew the place; he did not know Chapo Reyes but he knew the place they called the ranch of Chapo Reyes and he knew the Piedras de Amolar below White's Ranch; he knows nothing about the west side of the river as he never traveled there; when he first knew the river it was between the towns of Mesilla and Las Cruces and is now to the west of Mesilla; he remembers when the river changed there and he thinks it was in 1862 or 1863 but it was after the soldiers from Texas came to Mesilla; he returned from Tularosa to Las Cruces in 1883 and the railroad was being constructed then, but it was already below Las Cruces; the river does not now run near Alamitos and he does not remember when it stopped running there but supposes that it was when the river changed; before he left for Tularosa the river had changed. On cross-examination

it is developed that he with three other witnesses on the preceding Monday and Tuesday went to show where the old river was with Van Patten and a surveyor who he thinks was Mr. Steen and they showed the old river from Alamitos down to White's house. It appears at pages 1446 and 1447 that this witness was quite ill and was suffering from a bad headache so an adjournment was taken until the next day and the next day he was still so ill that it was impossible to proceed with his examination and the only other witness for complainant who was in attendance being also ill a further adjournment was taken until the following Monday from Friday, January 23, 1914.

On Monday, January 26, 1914, the witness Minjares was further examined but nothing more of importance was developed.

Francisco Rel, whose testimony begins on page 1360 of the record. Lives at Las Cruces; was born at Paso del Norte and his father took him to Dona Ana when he was 8 or 9 years old; his first trip to Paso del Norte, while he was still very young, with his father who brought freight to El Paso and the year afterward they made another trip; he was living in Dona Ana when the flag was raised in Mesilla and cannot tell how old he was at that time; after his second trip with his father he came in the following year to the fiesta and with his father, but after that he did not come again with his father; they traveled on the east side of the river and he never traveled on the west side; during those trips he became acquainted with the road, the river and various places along the road; his father told him the names of the different places; he knew Alamitos, the place now called Anthony, Tres Alamos, the Alto de la Bruja, the place which is now called Vinton, Old Canutillo, the Estero de las Sanguijuelas, the place which is now called New

Canutillo, the beaver dam, and Duraznito but he never saw any peach trees there, the place where the house of Chapo Reyes was, White's Ranch and the Piedras de Amolar below White's Ranch; from White's Ranch to Alamitos the road ran on top of the hills but at some bends would come down to the valley and then go up again; there was only one road on the east side of the river; Uranguena was a little below Tres Alamos and was a little ranch which he never saw but was told where it was; he did not know the Arroyo de la Artesa nor the man named Gualdarama; he is not sure about his age but his mother told him before she died that he was 67 years old and she died about 6 months ago. On cross-examination it is developed that he was with his brother at Carrizal in Mexico some months and was then about 15 years old and while he was there he heard that the Texans came to New Mexico. This seems to harmonize with what his mother told him of his age as her statement would make the time of his birth 1846 or 1847 and the Texan invasion was in 1862. It is also shown that the river was near the hills on the east side of the valley and that he had shown the old river to a surveyor and Van Patten with two others. On re-direct examination it appears that he did not go to Carrizal with his brother but with his first cousin and that it must have been an error in interpreting which makes it appear to say that he had gone there with his brother. This is shown on page 1889 and the reason for it is clearly indicated.

Sostenes Gonzales, whose testimony begins on page 1392 of the record. Born at Ysleta and lived there until 1896 when he came to El Paso; before that time he had made journeys up the river and was young when he made the first trip going then only to Canutillo which was about the time when he heard of the raising of the flag at Mesilla; he heard that, at Ysleta, he thinks after his trip to Canutillo which he made with his father who had

some cattle there with a herder, and he went to take provisions to him; the herder's name was Reyes Marquez who was his uncle; he saw no houses there at that time, but did afterwards and heard that Salado had a ranch there; he knew Salado long afterwards here at El Paso; he knew the house in which Salado lived at Canutillo but did not know him there; he stayed there three days while his father went to hunt deer and during that time he went with his uncle he thinks as far as the place now called New Canutillo; he did not see the beaver dam but his uncle told him that there was one; on that first trip he saw White's Ranch which looked as though somebody might have lived there, but he did not see anybody and they did not stop there; the river was right close to that place which was on a hill; he was told where Duraznito was; from White's house up to Canutillo the road was at the edge of the hills and the river was close to the hills; he did not go up the river again until he was about 14 years old when they went as far as Mesilla; the flag had then been raised at Mesilla and he thinks it must have been the same year because they were talking about it; they went on the east side of the river and crossed the river a little below the Ollas de Agua, a little below Brazito, and they were there only two days, and coming back crossed the river to Las Cruces and came by the Brazito Fort and along the edge of the hills; he never heard the fort called Fort Fillmore but it is a fact that the fort at Brazito was Fillmore; he shows his acquaintance with the place called Sanguijuelas and the place now called New Canutillo and the Alto de la Bruja; he does not know what La Bruja was and says it might have been an animal or a fox or something else, he never heard what it was at the time of his first trip to Canutillo, he was about eight or nine years old; he and several others went with Van Patten to see the old river; he was at Ysleta when the soldiers from Texas came to Mesilla and after they went away he went to Mesilla and at that

time the river was at the west side of Mesilla and was far from Alamitos. He thinks that he was born in 1842 but is not very sure; he and his father are Indians pure and simple; he thinks he was about twenty years old when the Texans came and he thinks he was about 20 years old at the time of the battle of Valverde; when he went with Van Patten to see the river two other Indians went also, Mariano Colmenero and Manuel Ortega. He thinks that he and Colmenero are about the same age but Ortega is older. They did not go to any place on the west side of the river. This witness attempted to make a drawing to show how the river and road ran in the early days which indicates how the road ran across what many of the witnesses have called rincones and it appears opposite page 1414 of the record.

Dionicio Apodaca, whose testimony begins on page 1417 of the record. Born at Mesilla although his family was living at Dona Ana where he has lived ever since except for a short time; he is 68 years old; was born at the ranch of Julian Martinez, his grand-father; remembers when the flag was raised at Mesilla, he was 12 or 13 years old; when he was young he made journeys from Dona Ana to Paso del Norte where his father used to get supplies for his store at Dona Ana; when he first came to Paso del Norte he does not remember how old he was but he was old enough to take care of the oxen and went on the east side of the river, the road passed by the Fort of Brazito; they used to make a trip almost every month and he became well acquainted with the road and river and all the places where they had to stop or camp; he knows a man named Gualdarama who is still living at the smelter at the Canon which is above El Paso; his testimony shows that between Alamitos and the Piedras de Amolar the river ran near to the hills. On cross-examination it is developed that he has not talked with any one about what he knew concerning the river until

he was put on the witness stand; he has been in El Paso for sometime as he came to visit his nephews and Mr. Van Patten asked him if he knew anything about the river and he told him he did and that if he was placed under oath he would tell what he knew and today is the first time he has told anybody anything about it.

Juan Garcia, whose testimony begins on page 1445 of the record. Lives at La Mesa and has lived there about forty years; was born at Paso del Norte and lived there 10 or 12 years and then came here with his father who worked for Juan Maria Ponce the first settler of this place; that was before the war between Mexico and the United States; he remembers when the United States soldiers came to Paso del Norte; they put their camp near their house at a place called El Real; he met two of the Generals, McKean and he does not remember the name of the other one and he does not remember what time of the year it was when they came; he was about 15 or 16 years old at that time when the soldiers came; he was old enough to work but not like a full grown man; he worked for Simeon Hart at his mill for about 3 years and Hart was a Major in the Company and used to pay the soldiers; he supplied all the forts from Las Limpias to Valverde with flour which was taken in the government wagons; after working for him the witness went back to El Paso and from there went to La Mesa; Mesilla was settled before La Mesa; he had traveled up the river long before he moved here; he made his first trip up the river with his father when he was about 13 years old and went to the Temascalitos Plain or Prairie; his father was sent to that place by his employer to take provisions to some employes he had there; it took them about 8 days to make the trip and remained at the camp three days; the Ollas de Agua are higher up; after that first trip they went every year to bring the wethers for three years; he remembers when they raised the flag

at Mesilla which was about 1853 or 1854 and he had made three trips up and down the river before that, traveling on the east side; he became acquainted with the road and river and the various places up above between here and the country to which he went; he shows acquaintance with the principal places along the river on the east side; he remembers when the dam at the mill was washed away because he worked at that place at that time and he believes the dam was destroyed 60 or 70 years ago which was before he went to La Mesa to live; he remembers when the soldiers from Texas came up during the Civil War which was before the dam was destroyed but about that time; when the flag was raised at Mesilla he was working at the mill of Mr. Hart; much later when he was fully grown he began to travel on the west side of the river and shows familiarity with the places on that side of the river; he has recently revisited the east side of the river with Eugene Van Patten and a surveyor from Las Cruces, whose name was Steen, and he pointed out the old river as he first knew it as a boy to the surveyor. He finally says that he is sick and suffers from his legs and from dizziness in the head and when Don Eugenio saw he was so sick he allowed him to bring his wife to take care of him and he wants to get through so that he can go home and thereupon a recess was taken. On cross-examination it was developed that he with three or four other witnesses had been up the river with Van Patten and showed the old river between White's house and Alamitos. It is also made to appear that he is a Pueblo Indian. He also says that the other General whose name he did not remember in the morning was General Malone and that the soldiers whom he saw at the place called El Real were there about 20 days but he does not know where they went from there and at that time he says he was nine or ten years old. As those soldiers came to Paso del Norte in 1846 this would make the date of his birth about 1836 or 1837 so that his age at the

time he testified in 1914 must have been about 77 years. He says he heard at the time that those soldiers had fought a battle at Temascalitos and that the Americans had been victorious. It is a historical fact that troops under Doniphan's command had fought a battle which was known to the Americans by the name of the battle of Brazito but among the Mexicans by the name of Temascalitos. It would seem that his acquaintance with the river or with that part of the river the location of which is in dispute began a little before 1850.

Jose Garcia, whose testimony begins at page 1478 where it is made to appear that he is quite deaf. He has lived at Anthony about three years and before that he lived in the Refugio Grant more than 25 years at a point opposite Anthony; was born at Paso del Norte where he lived until he was over 20 years old and then went to Dona Ana for about four years after which he went to Amoles to live where he says he lived over 20 years until the town was destroyed by the river; then he went back to Dona Ana where he stayed over one year and then went back to Amoles but the people had moved to where they are living now at Las Cuevas and La Union; he says he was about 20 years old when he went to Dona Ana to live. There must be some mistake about this because it is quite well shown by other witnesses that Amoles was destroyed in 1864 and if he lived there 20 years before it was destroyed he must have gone there in 1844, but it is also shown that Amoles was not settled until after the Treaty of Guadalupe Hidalgo and was a part of the Refugio Grant. He further says that he remembers when the flag was raised at Mesilla, which we know was in 1854 and at that time he was living at Amoles where he had been living for some time; he does not know how old he is but he remembers the Mexican War and he was at that time living at Paso del Norte; he heard they fought a battle at Temascalitos and he remembers the

soldiers that passed through El Paso and they were camped on the other side of the river where the Santa Fe depot is now; they came in the winter time; he had not been up to Dona Ana before those soldiers came; he remembers when Mesilla was first settled and at that time he was at Paso del Norte; he shows quite a thorough acquaintance with the east side of the river and the places on that side except the beaver dam, having gone three times up the river with his father to cut wood when he was about nine years old, which they brought down in the river in rafts. It is difficult to fix the age of this witness but in cross-examination he says that he is about 16 years older than Jesus Enriquez who testifies at page 1938 that he was born in 1844, which would make this witness about 18 years old when Doniphan came to Paso del Norte in 1846, and as he testifies that he went up the river to live when he was about 22 years old that would be in about 1850. On cross-examination he says that the soldiers who fought the Texans are the ones who camped on the other side of the river and who went to Chihuahua where they fought at Sacramento and that he was about 15 years old at that time and he went to the camp to sell eggs; at that time there was no fort on this side called Magoffin's fort and he remembers when that fort was started and he was already a grown man. He went to show the river with Van Patten and five other witnesses in August of last year and showed the river from Alamitos down, and also a second time 15 or 20 days afterwards with a surveyor and Van Patten. The cross-examination is very long and wearisome but does not seem to be of great importance. He was compelled several times to ask for opportunities to rest.

Trinidad Benavides, whose testimony begins at page 1544. He lives in Las Cruces and was born at Chamizal and was taken to Dona Ana by his uncle when he was about eight years old and they remained in Dona Ana

where his uncle had business, as well as here also, and they were up and down the road frequently; his uncle took all the family to Dona Ana because his father died and he, the witness, lived at Dona Ana until he came to Las Cruces 15 years ago. He was in Dona Ana when the flag was raised at Mesilla and he thinks he was about 12 years old. This would make the year of his birth about 1842 so that when he testified in 1914 he was about 72 years old. He traveled up and down the river on the east side where the road went along the hills because the river did not permit it to go below and between Alamitos and White's Ranch the river was near those hills; he shows a thorough acquaintance with all the places along the river. On cross-examination he says that from his recollection as a boy he remembers how the river ran throughout the whole distance between Alamitos and White's Ranch and that he was recently examining where the river used to run; when he first went up the valley Mesilla was already founded and they were just starting to settle Las Cruces; Dona Ana was the first town settled and was the mother town of all those towns up there; he knew Fort Fillmore which is also called the Fort of Brazito; he went last Sunday with Van Patten to show him where the old river ran and on Monday he went with Mr. Steen, a surveyor, to show him about the old river. He finally says that he is 71 years old and being asked how he knows, on page 1577, he says that it is by judging about the age of his brothers and his uncles and that his brother who went with him to show the river was older than he about three years; and when he went to show the river, he and his brother went and Van Patten and the surveyor and the driver.

Casimiro Benavides, whose testimony begins on page 1588. He lives in Dona Ana and has lived there ever since his uncle took him there, and he raised him. The

witness who has just testified is his brother and he is older than his brother, he being 74 and his brother 71; he was born at Paso del Norte; there were four brothers and two sisters in the family, two older than he but they are all dead except him and Trinidad; he remembers the raising of the flag at Mesilla and was then in Dona Ana and had been living there some time; they say the flag was raised in 1854 and at that time he was grown up; after he went to Dona Ana with his uncle they made several trips to Paso del Norte taking wine from here and from there bringing beans; he was about 20 years old when his uncle died; he made a few trips with his uncle before he died to Paso del Norte and when they did not come in carts his uncle used to send him on horseback to attend to business; he had peons working at El Paso cultivating grape vineyards; they used to sell the corn and beans which they brought to Paso del Norte; it is a better country for corn and beans up there than it is down here; his uncle went first to Dona Ana to build a house and took the family afterwards; he had already cultivated land down there; and in those trips they usually traveled on the east side; he became well acquainted with the road and the different places along the road which went over the hills; he then shows great familiarity with all the places from Alamitos to White's Ranch and with the river which ran near the hills; he heard of the beaver dam but did not see the beavers; he went to show the river last Monday, with his brother, Van Patten, the surveyor and the driver, and showed the old road when showing the old river.

Jesus Cuaron, whose testimony begins on page 1624. He lives below here and was born at Paso del Norte; he does not know in what year he was born; his father's name was Jesus Cuaron but he was very little when his father died; his father was killed by the Apaches and they killed seven others with him; it was said that his

father was killed at the Alto de los Cuarones but he does not know where it is himself. He has always lived at Paso del Norte or near there; when he was very small an uncle of his mother and his father took him to Socorro and Valverde to sell dried fruit; he was then about 10 years old; they stayed at Socorro eight days and then returned to El Paso; he remembers some of the different places along the road including the Jornada del Muerto, going over which they had much trouble, taking two days and one night without any water; there were very few houses at Socorro; he was taking care of the oxen for his uncle; went there with fourteen carts on that trip but most of the people were from there who had come here and were returning home; when he came back from Socorro there were four carts; only one belonged to his uncle; they went through Las Cruces and Dona Ana, and he remembers the Fort of Brazito; on that first trip there was no fort there nor was any settlement at Las Cruces; after that first trip it was more than twenty years before he made another; he saw the Fort of Brazito when he took flour from the mill that was here at the stone house. He took the flour in carts; he went with his uncle helping him; they went three times to take flour there and traveled on the east side of the river; that was a long time before he enlisted as a soldier, more than 14 years; the fort was then new and was just commenced; when he first saw the town of Dona Ana, he was a man already when he worked on the acequia to help to clean it but it had already been dug; that was long before he went to be a soldier and Dona Ana was a new town and he was a man already; that was long after the time when he took flour to the fort and he went to Dona Ana with a friend who had uncles there; when he took flour to the fort there was nothing at White's Ranch but he saw the house afterwards; he did not know White himself; the Indians made the people run away from there and leave the house alone; he knew the place called Duraznito and he ate

three peaches from the peach tree; he became acquainted with Canutillo and Alamitos and while he appears to be familiar with the river between Alamitos and White's Ranch he does not appear to know the names of all the places; he enlisted as a soldier at Fort Craig which is above the Jornada, and he served two years and a half. He went recently in an automobile with Van Patten, the driver and another man to show the old river; he says he knew where the old road was and where the river used to run and he could show it very well; he went to Alamitos with Mr. Reber and the other gentlemen and he actually did show the river between Alamitos and White's Ranch. He was not married until after he served as a soldier and says that he was then an old man.

Valentin Abalos, whose testimony begins at page 1699. Was born at Paso del Norte and lived there until the dam was washed away and he was an old man already It seems probable that the dam was washed way in 1864, at the time of the big flood which changed the course of the river at Mesilla to the west side of the valley. He then went to Chamberino and has lived there ever since; before he went there to live he had made many trips to that part of the country; the first time he was 7 or 8 years old when he and his brother Enrique went to Dona Ana to bring his father from there as he was sick; Enrique was the eldest of the family and there were seven brothers and he, the witness, was the youngest of the seven. His father was one of the settlers of Dona Ana; when they went for him he did not wish to come back then and he said he was going to sell everything he had there and then return home but in the meantime he died; there were only scattered houses at Dona Ana then; he has been told that he was born in 1835; and, as Dona Ana was settled in 1840, the first trip of the witness must have been in 1842 or 1843, not long after the beginning of Dona Ana. About eight years later they made

more trips when they commenced to bring corn and beans down from Las Cruces and Mesilla; he remembers when Mesilla was settled and it may have been five or six years after when he saw Mesilla; when he went there the first time there was no flag there but on his second trip the flag was already on the tree; he went one year and when he went the following year the flag was there; when he made that first trip to Mesilla he was quite grown up. (He must have been about 18 years old when he went to Mesilla.) All the time since he was fifteen years old until the time when the dam of El Paso was washed away, he went up with wood-cutting parties and they brought the wood down to Paso del Norte by the river; they went in August; they cut wood this side of Chamberino. He says he worked for Scott more than three years at his house a little this side of Alamitos or right there; he was digging a ditch for Scott who wanted to plant and irrigate but the river washed the ditch away. At pages 1722 and 1723 of the record it appears that this witness was quite ill and unable to proceed so that an adjournment was taken until the next morning. He says that he never saw the water running at Piedras Paradas until now, this year, although he says that for years after the flag was raised at Mesilla he went to that neighborhood frequently to look after oxen that they were grazing in that part of the country; after Amoles was destroyed the river ran by the Alto de los Cuarones for a time; four of his brothers were at the battle of Temascalitos and they were already grown men; he himself was the youngest of seven brothers; he says he was about forty years old when he worked for Scott and the river was west of Scott's house and it was running to Tres Alamos and he further says that the river continued to run on the east side of the valley about three years after he worked for Scott. At page 1736 he says that he does not know when he went to show the river first; he has been so sick and is so sick now that he does not remember the

date; that he is so sick that he may have made some mistakes in his testimony on account of his head; but that he did show the river to Van Patten and some other persons whose names he does not know and there were other Mexican witnesses who went with him, people from Dona Ana, from Mesilla and Las Cruces and that this was now during this year. He further says that when he went there for that purpose he was able to find and point out to the people where the river ran when he first knew it and he adds that he, the witness, knew it and further that he, evidently referring to Van Patten, knew the river also because he used to run the mail.

Jesus Enriquez, whose testimony begins on page 1737. He lives at Amoles and was born at Juarez in 1844; he was twenty years old when he was married; he lived at the old town of Amoles before it was destroyed which he thinks was in 1866 but is not very sure; he was six years old when he went to Amoles; his father Juan Simon Enriquez went first and after they constructed the ditch he took the family; he thinks he can give the names of a part of the people who lived there and being asked to begin at the northwest corner of the plaza he gives the names of 47 people and says he has been all around the plaza with those names and says that there are a few more he cannot remember and then adds two names; he has shown the place where the town was to Mr. Post, a surveyor, and thinks it was in September, 1912; his present house is north of the old town and it may be about 300 yards; he then gives the names of five other persons who lived at Amoles and two more whose first names only he remembers; he has but one brother living who was born at Juarez in 1850 and they were just starting to build the ditch at that time. The testimony of this witness seems definitely to fix the settlement of Amoles in about 1850. At the beginning of his testimony he speaks of Amoles by the name of Refugio Amoles, and

says that where he lives is on the Refugio Grant; the island of Jose Maria Garcia was about three miles south of Old Amoles around which was a bank on the south, north and west about seven feet high. At page 1747 he appears to say that the river channel was west of the island but taking his testimony altogether it seems to indicate that there was a deep estero next to the island and the river was very far from it and there was farming land on the island for which they got water from the Refugio Ditch. At page 1750 he evidently confuses the Mexican War about which he did not know anything and the Civil War when the Texans invaded the country, and on the next page being asked about the battle of Mesilla he says he remembers it and that it was a political fight and that he was there himself at the battle, and he goes on to tell about the details of the fight in which the County Judge named John Lemon was killed. On further examination he says that he was married on February 7, 1865; and he says definitely that it was only an estero which was on the west side of the island of Jose Maria Garcia.

Pedro Alejo, whose testimony begins on page 1958. Lives at Chamberino; was born at Paso del Norte April 29, 1835, and lived there until 1848 and went to Dona Ana in 1849 and remained there one year; went to Mesilla in 1850, and was there when it was first settled; went to Dona Ana on the east side of the river and remembers something about that trip; before he went to Mesilla, he made one trip from Dona Ana to Paso del Norte on east side and remained there a few days only, having come to the fiesta of San Lorenzo in August; went to Dona Ana in the latter part of February, 1849, says he was there on the 2nd of February, the fiesta day of the Saint of that place; in those three trips he became acquainted with the river and knew the names of the places he heard. At the time of his first trip Magoffin was not

living here; White's house was a new house but it was not occupied; it was on a height and the river was below; knew Canutillo in 1849; no one lived there then; between the place now called New Canutillo and White's Ranch the river was very near the hills and the road was in the hills; he knew Alamitos and Tres Alamos; has recently been at Alamitos and knew the place on account of the bend that is between there and Tres Alamos; lived at Mesilla from 1850 to 1870; remembers when the river changed at Mesilla so as to put that place on the east side of the river, before which it was on the west side; cannot tell the year but it was the year when the Texans came to Mesilla. After he went to Mesilla in 1850 he saw the surveyors or commissioners from Mexico and worked for them as a waiter; he remembers Salazar and Vordicu, a Frenchman; their camp was near Picacho; it was in April, either 1851 or 1852; there were 19 men in the party, they were all Mexicans; he saw Vordicu build the monument across the river from Dona Ana, on top of the Picacho hill while he was working for them. It is difficult to understand how Vordicu was with the Mexican part of the boundary commission as it is a fact that a man named A. de Vaudricourt was in the employ of the Amedican commissioner and his name appears at page 595 of Volume 2 of Bartlett's Personal Narrative, as the principal draftsman. Bartlett was the American commissioner and it seems altogether probable that the name of Vordicu given by this witness must be the name as he remembers it for de Vaudricourt. The witness further testifies that the monument has not been there since 1854 when they moved it up here to La Ceja, and in this statement he is evidently referring to the monument on the hill west of the river some distance above El Paso on the present international boundary, established under the Gadsden treaty. He further testifies that General Trias came to Mesilla in May, 1854, and caught him, the witness, and ordered him to be a soldier, but he ran away

and swam across the river which was high and escaped and worked in the fields cutting wheat until July when he went to San Antonio, Texas, as a mule driver; they raised the flag at Mesilla in September. On cross-examination he says that he had been with Van Patten to show the river and another man was there from Loma Parda whom he does not know but he thinks he is a witness; he is here; he contends he knows more about the river than this witness who contends that he knows better than the other, but they agreed on the location of the river; the river was running on this side all the way against the hills. On page 1971 of the record, he gives an answer much like that of another witness already referred to, when he was asked in Question 207, referring to the conversation he had with Mr. Chaves and the Attorney General of New Mexico on the preceding Saturday, if he told them that it all happened so long ago that he could not remember very well and his answer is "I remember everything better,—what took place at that early time, than even what takes place now. I am more satisfied of what I knew then than what I know now." He says that when he worked for Salazar he heard the name of only one commissioner representing the American government which was Caniliche, but it seems impossible to identify that name with anyone connected with the American commission. He then says that he did know of General Garcia Conde and that he was the collector of customs at Paso del Norte and one of the commissioners but he never heard that he was a general in the battle fought near Chihuahua, but he did hear that General Angel Trias fought a battle below Chihuahua at Santa Cruz de Rosalia. From White's ranch to Alamitos the road used to run most of it against the hills except at very few places and when there was little water in the river the road did not run in the valley but in some places it did, though not all of the road; the road in places was very near the river and in places quite far from it; the first trip he made on the

west side of the river was in 1853, after he had worked for Salazar, and when he went back he went on the east side of the river; and he did not see the river flowing by the foot of Piedras Paradas. After the Texans went away the river was not running at Tres Alamos but went the other way, he does not know where but at White's house it was running where it is running now and perhaps was a little bit nearer to White's house and it runs there today. He was present looking on at the battle of Mesilla where the Texans were commanded by Colonel Baylor and the Federal troops went to Fort Fillmore, running away at night, and hid their ammunition at some water holes and then went across the mountains and the following day the Texans captured an officer by the name of Barosy and some of his troops and made them prisoners and brought them back to Brazito. On re-direct examination he says that when the river changed at Mesilla it carried away the old town of Amoles and the people got away like rats to the hillsides; when he first traveled on the west side he could not see the river from Piedras Paradas but by going on top of the rocks to look at it towards Muleros and it was a long distance and the river went close to White's house; he has been married once and he was twenty-eight years old when he married at Mesilla; he had eighteen children that lived and two others who did not live and seven of them are living now; he has thirty-three grand-children and only one great-grand-child.

Jose de Jesus Garcia, whose testimony begins at page 1985. He lives in Garfield, New Mexico, and is 85 years old; he was born at Socorro, New Mexico; he thinks he lived in Socorro until 1872; the first trip he made to this part of the country was in 1844 when he was about 15 years old as he was born in 1829; he came with his father in a caravan of a hundred carts from Socorro County, coming to buy supplies from El Paso such as wine, dried fruit, pinoche (brown sugar) but this word ought to be

panocha, and other things; there were no settlements in this part of the country then but he thinks that at Dona Ana there was some sort of a station but there was no one living between there and El Paso; they stayed there only a few days trading at Paso del Norte and then went back over the same road on this side of the river that we are on. In 1849 was his next trip when he came following two thieves who had stolen a girl, a relative of his; he was with his father and four or five other men and they caught the thieves at Canutillo where there was nobody living at that time; when they were getting near the thieves they ran away and left the girl; he shot at one of them and must have hit him because they could see the blood on the trail; they did not capture the thieves and as soon as the girl saw them she started towards them crying. His account of the pursuit of the thieves is quite interesting as it led the party down the river through a long canon which is west of the celebrated Jornada del Muerto, which has always, even in recent times been considered entirely impassable. They turned back from Canutillo with the girl and traveled on the road, crossing the river at Valverde; Canutillo was on the east side of the river and the older people told him that that was Canutillo which was close to the road and the river was right there and not far from the hills. In 1862 he came with his wagons to San Ygnacio, which is some distance below El Paso, to take a freight of 14,000 pounds of wool; he came after the battle of Valverde which he says was on the 21st of February, 1862, and he thinks he came in September or October; in 1856 he came down with his family to San Ygnacio in his carriage to visit his cousin where he stayed about two weeks, coming down and going back over the same road; he knew the place called Alamitos; on the first trip with his father they camped for some time there; the caravan stopped for two weeks and the Indians ran away some of the oxens, and from the camp he used to go to the river

to swim; the river was very near to the camp; no one lived then at Alamitos; in 1849 when they came after the girl there was a station there but he does not know who lived there; they told him it was an American; they merely passed by, traveling fast with the girl; in 1844 there was nothing at Dona Ana but in 1849 there were people already there; from Alamitos down the river was crooked and had bends by the hills; the river was running on the east side of the valley and according to the bends that the hills formed the river formed bends also; between Alamitos and Canutillo according to his recollection the river was from four to five hundred yards from the hills at the farthest point from the hills. After this his memory does not appear to be perfectly clear about the different trips which he made, but finally at page 1993 he says that he came down in 1844, the first time, in 1846 he came with his cousin on horseback and in 1849 they came after the girl and afterwards he came in a carriage with his family and when he came with wagons it was in 1862, to take the 14,000 pounds of wool. He then says that at the time of those different trips the river between Alamitos and White's Ranch was always on the east side of the valley and was still there in 1862. He says he was a member of the legislature the first time in 1862 and afterwards in 1868 and in 1879 for the third time; that he served as Probate Judge for Socorro County for two terms and in Sierra County for one term. He says he has been married twice and with his first wife had five children and only one lived; by his second wife he had eight children and six of them lived; the children of his first wife died; he has no grandchildren; the children of his second wife are all young and none of them have married yet; the youngest of his children is now about eleven years old and his wife is very young being only forty-one. On cross-examination he testifies that he does not read or write a word of English and does not understand English because his father

did not permit him to learn any English; his father was an officer in the Mexican Army and said that Santa Ana betrayed them and was always very much opposed to the Americans; he never tried to learn English because his father had prohibited him. It may be said here that among well regulated families of the native people of New Mexico, children always obey their parents even up to an advanced period in life. A prolonged cross-examination which covers more than 20 pages of the printed record does not seem to add to or detract from his testimony in chief.

Charles L. Post, whose testimony begins on page 1758 of the record. Mr. Post is the surveyor who made the map, a reduced facsimile of which is attached to the bill of complaint, and his testimony shows that his location of the river was based upon information from the numerous old men who at different times accompanied him and pointed out the location of the old river-bed. The most of the witnesses who accompanied him to point out the old river-bed, have been examined in this case as hereinbefore shown and it will be seen that every one of them with the exception of one who is entirely blind; and Jesus Enriquez, Dionicio Apodaca and Jose de Jesus Garcia testified that they pointed out the location of the old river to Mr. Post or to Mr. Steen or to a surveyor whose name some of them do not give. After he had made the map based upon information from the old men, he saw the report of John H. Clark for the first time, or so much of it as has been preserved and is printed in Senate Executive Document No. 70 of the first session of the 47th Congress, in which he found a statement by Clark that his first monument on the 32nd parallel was six hundred feet east of the Rio Grande, and he then located and identified Clark's station No. 1 from the bearings given by Clark upon distant mountain peaks and found that it was approximately 600 feet east of the bank of the river as pointed out by the old men.

It is submitted by complainant that this testimony satisfactorily proves the following facts:

That from the time of the earliest recollection of these old men down to the time of the great flood which changed the course of the river in 1864 so as to put Mesilla on the east side of the river and to destroy several small towns, below that place, the river ran near the hills on the east side of the valley between Alamitos and White's Ranch, and, in some places, where the railroad is now, while the road on that side of the river was on the hills, generally, because the river was so close to the foot of the hills as to make it necessary to keep up on the higher ground, and it was only after that great flood that the river ran anywhere near the west side of the valley as is now claimed by defendant.

Some of the witnesses were unable to state their ages exactly, but it is possible to approximate their ages by reference to well known events, such as the raising of the flag at Mesilla in 1854; the coming of Doniphan's army to Paso del Norte in 1846; the settlement of Dona Ana in 1840, shown by testimony and by Senate Executive Document No. 43, first session of 43rd Congress; the settlement of Mesilla about 1850 (see Senate Executive Document No. 56, first session of 43d Congress which shows a grant made in August, 1853, and at page 31 that many of the colonists were already upon the lands, and at page 132 that in 1851 there were formed or were being formed several important settlements, including Mesilla and Los Amoles); the settlement of Amoles about 1850, shown by Jesus Enriquez, which was on the Refugio Colony Grant, which was made in 1852, as appears in House Executive Document No. 258 of the first session of the 43rd Congress, beginning on page 41. The original papers copied in that document show that the priest, Ramon Ortiz, mentioned by witnesses, was a commissioner to make grants and establish the civil colony of Refugio, and that

Jose Maria Garcia and Simon Enriquez, also mentioned by witnesses, were evidently prominent in that grant as late as 1871.

The Refugio Grant, like that of Mesilla, was one made as a refuge for Mexicans who, after the treaty of Guadalupe Hidalgo in 1848, preferred to remain citizens of Mexico although living in the territory ceded to the United States. It became a part of the United States by the Gadsden purchase in 1853.

The ages of the witnesses were as follows:

Felipe Madrid, 76; Mariano Colmenero, 68; Eligio Perea, 70; Cornelio Lopez, 77; Margarito Lujan, 71; Jose Maria Ramirez, 73; Reyes Marquez, 82; Catarino Barela, 78; Julio Rivera, 66; Juan de Dios Sais, 81; Jacinto Perea, 64; Claro Lucero, 76; Agapito Marquez, 77; Longino Mestas, 65 or more, married at 17, Church Record shows in 1865; Jose Hidalgo, 80; Leandro Benavides, 72; Calistro Tarin, 72; Eugene Van Patten, 74; Nestor Albrides, 83; Severo de la O, 69; Faustino Acuna, 72; Santos Alvarez, 71; Victoriano Duran, 70; Sixto Garcia, 72; Jesus Arvizu, 73; Antonio Garcia, 75; Florencio Lucero, 96 (?); Juan Albillar, 85; Dionicio Parra, 81; Dolores Alejo, perhaps 61 or 62 or more; Pedro Benavidez, 76; Juan Marquez, about 75; Juan Apodaca, 74; Vidal Minjares, 67; Francisco Rel, 67; Sostenes Gonzales, 72; Dionicio Apodaca, 68; Juan Garcia, 78; Jose Garcia, not less than 72, perhaps as much as 82; Trinidad Benavides, 71; Casimiro Benavides, 74; Jesus Cuaron, perhaps about 100; Valentin Abalos, 79; Jesus Enriquez, 70; Pedro Alejo, 79; Jose de Jesus Garcia, 85.

A picture which gives a fair idea of the character of the river in the region in question, is to be found opposite page 44 of Emory's report, which is Senate Executive document No. 108, first session of 34th Congress. It is a picture of the "Rio Grande—near Frontera,"

showing the Franklin Mountains, east of the river, in the background. It will be remembered that Frontera was an astronomical station at White's Ranch.

It should be added that every one of the old witnesses except four, went with one or both of the surveyors employed by complainant, and pointed out the old river as he knew it early in life, between Alamitos and the Piedras de Amolar, near the head of the canon above El Paso, showing that river to be as represented on Post's map, the four exceptions being Nestor Albrides, who has been entirely blind for 8 years, Jesus Enriquez, who showed Mr. Post where the old Town of Amoles had been, Jose de Jesus Garcia and Dionicio Apodaca.

Other branches of the case will be considered in another volume of the brief for the complainant.

FRANK W. CLANCY,
Counsel for Complainant.

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JAMES D. MA

PART TWO

BRIEF FOR COMPLAINANT

In the Supreme Court of the United States

OCTOBER TERM, 1920.

STATE OF NEW MEXICO,

vs.

STATE OF TEXAS.

NO. 3 ORIGINAL.

JAY TURLEY,
FRANK W. CLANCY,
Counsel for Complainant.

The Clark Quick-Printing Co., 1332-34 Lawrence St., Denver, Colorado.

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In the Supreme Court of the United States

OCTOBER TERM, 1920.

STATE OF NEW MEXICO,

vs.

STATE OF TEXAS.

NO. 5, ORIGINAL.

BRIEF FOR COMPLAINANT.

PART II.

Part I of this brief is devoted to a statement of the testimony of old witnesses as to the location of the river as they knew it early in life, the main issue being as to the location of the Rio Grande in 1850, as shown in the "Statement of the Case" beginning on page 5 of Part One. This is an original case, to be argued and submitted to the Court, and decided, upon the testimony contained in the record, but in this Part Two, devoted as it is principally to matters of a technical-engineering character, it does not seem advisable to attempt any similar condensation of testimony, but better to submit our contentions under distinct heads, setting out important and vital points, with references under each, to the testimony contained in the record.

FIRST.

Complainant's location of Clark's monument No. 1 and of the old river on the 32nd parallel is correct.

We may assume for the purposes of this case that, so far as the lines established by John H. Clark in 1859 are relevant to what is here in issue, we may be bound by them under the resolution of Congress which appears at pages 10 to 12 of the printed record. It is to be noted, however, that that resolution is a mere affirmation of the lines run by Clark, and that by the instructions given Clark which appear at page 264 of Senate Ex. Doc. No. 70 of the 1st Session of the 47th Congress, his work was so limited as not to include any part of the boundary south of the 32nd parallel, which is the subject of the present litigation. The record of this work so far as we have it, shows that he limited himself to what was set out in said instructions, and did not attempt to survey the boundary between Texas and New Mexico south of the 32nd parallel.

The most important point in Clark's survey, that is, important to the present controversy, is the correct location of his first monument on the 32nd parallel, which he calls the "initial point," and at page 301 of the Senate document, he says it was of stone and stood "600 feet from the bank of the river and between them" lay "the road from El Paso to Fort Fillmore."

As will be remembered, complainant's witness, Post (pp. 1759 to 1765 of record), surveyor and engineer, with the information from old men located the old river of 1850 where it crossed the 32nd parallel, and made his map of which a reduced facsimile was later filed with the bill of complaint, and thereon showed the old river and road, before he knew anything about Clark's work (pp. 1778-9 and 1840 of record), and on December 31, 1912 (p. 1779 of record), he identified from bearings on mountain peaks, Clark's station 1 and subsequently found (pp. 1786 and 1910) that it was 600 feet east from the old river previously identified by the old men (p. 1821), and that the old road, as pointed

out by the old men was about 130 feet west of the railroad track (p. 1787), station 1 being a short distance east of the railroad track. Steen also, at page 2029, shows station 1 to be 600 feet from the old river located by the old men, as does Turley, at page 2103. Post also in like manner identified Clark's stations 2, 3 and 4 on the parallel, and defendant's engineer witness, Campbell (p. 2454) admits these locations by Post to be correct, but does not agree that Clark's "initial point" marked by a monument, was at his station 1.

Station 1, taken in connection with the location of the river and road by the old men, is just where Clark, at page 301 of the Senate document, says was his initial point, marked by a monument. This is a remarkable corroboration of the old men who showed Post the old river and road, and Post found at station 1 (p. 1781), a number of stones which may fairly be considered as the remains of the monument erected by Clark, especially as no such stones were to be found outside of a radius of a few feet, within 900 or 1000 feet (Steen, p. 2032). The existence of these stones is also shown by defendant's witnesses at pages 2456 and 2644-5 of the record.

And nowhere in Clark's record is there to be found any other description of the location of his first monument, and it is absurd to think that he would not identify that important monument as he did other stations and monuments by bearings on mountain peaks, by which, as he says on page 306 of the Senate Document, "the line could be reestablished by a common surveyor."

The foregoing short exposition may be made plainer, perhaps, as follows:

Clark's record of his survey on the 32nd parallel begins near the foot of page 16 of the Senate Document No. 70 of the 1st Session of the 47th Congress, and the controversy about the location of his monument 1, which at page 301 he says was "600 feet from the bank of the river, and between them lies the road from El Paso to Fort Fillmore,"

turns largely upon the meaning of the first entries at the foot of page 16. They are as follows, as printed:

Survey on parallel 32° 00′ 00″

January 26th Angles read from E. by S.

Station 1

From mon. to st. 1 measured (2) 55 ch. 33 ft.; n.

base line - - - - - 00 00 00

It is contended by defendant that this means a measurement from a monument somewhere west of station 1, in an easterly direction as far as station 1, the location of which is undisputed (see Campbell's testimony, at page 2454); but this ignores "n. base line" as to which there can be no doubt that it means "north end of base line" as it appears in numerous other places with that meaning, and complainant contends that the measurement was between the north end of the base line and a monument at station 1. It must not be forgotten that station 1 was identified by Post after he made his map based on the statements of old witnesses, that he had no previous knowledge of it and that it is 600 feet from the bank of the old river as located by the old men, thus corroborating the correctness of their statements when taken in connection with Clark's statement at page 301 of the Congressional document, that his first monument was 600 feet from the bank of the river. If his first monument was not at station 1, it cannot be located from his notes as other stations and monuments can be, by bearings on permanent, immovable mountain peaks. Defendant contends that the zeros printed on the same line with the words "base line" indicate the direction of the measurement from west to east, while plaintiff's position is that they merely indicate the position of Clark's instrument when he began at station 1, and should appear above the entry quoted, just as similar zeros appear on page 18 under "station 2" and under "station 6 (Evans)"; on page 19 under "Station 3 (Evans)," under "station 3, monument," and under "sta-

tion 4"; on page 20 under "station 5"; on page 21 under "station 39," under "station 40" and under "station 41"; on page 22 under "station 42" and under "station 43," and on pages 23, 24, 25, 26, 27 and numerous others.

By comparison with other entries in Clark's field notes and in the light of the testimony, the beginning entries of work on the 32nd parallel on page 16 of the Senate document, ought to be reconstructed so as to read as follows:

Survey on Parallel 32° 00′ 00″

January 26th Angles read from E. by S.

Station 1

	00° 00′ 00″
From mon. to st. 1, measured (2) 50 ch. 33 ft.; n. base line	
To flag mt.	2 34 05

The foregoing is slightly different from the form in which the witness Turley makes it (page 2188 of the record) but in substance is the same, the main idea being that the zeros should be separated from the note about the measurement. This is substantially conceded by defendant's witness, Campbell, at page 2509 of the record.

This is the only reasonable inference to be drawn as only in this way can the entry be made intelligible. Whether the error is in the original notes or in the printing, it is impossible to determine, as we have never been able to find the original notes. A fact worthy of note, to which plaintiff's witness Turley calls attention at page 2162, is that but two of Clark's books, numbered 9 and 17 respectively, are printed, leaving 15 others unaccounted for (see page 3 of the Congressional document), and as a further indication of gross error, perhaps by the printer, we note that, after proceeding with the survey on the 32nd parallel from page 16, on January 26, to the foot of page 20 on February 2, at station 5, it is necessary to turn back to page 11 to find the next station, 6, near the middle of the page, where, by the way, the zeros are printed as they ought to be.

It should be stated here that Clark's notes show that he established a base line for his work on the 32nd parallel, 4750 feet in length. And Mr. Campbell, expert engineering witness for defendant (p. 2454 of the record) agrees that plaintiff's witnesses have correctly located Clark's base line, and stations 1, 2, 3 and 4 on the parallel. It is plainly shown by Post, Steen and Turley, that between station 1 and the north end of base line, the distance is 50 chains and 33 feet or 2533 feet. In view of the numerous obvious errors in the printed record of Clark's work, as shown by witness Turley at pages 2114 to 2116, his testimony standing uncontradicted, it seems clear that "55" is an error, either by Clark, or by the printer, and should be "50."

Counsel for Texas is shown by the record to have consumed much time in efforts to badger and confuse the expert witnesses of the plaintiff as to the length of the chain used by Clark, when it was perfectly plain that it could not have been other than fifty feet as is shown by Post (p. 1786), Steen (pp. 2057-8) and Turley (p. 2148) and as is stated by Campbell, defendant's chief expert, at pages 2510 and 2562.

As an example of this class of cross examination although on another, but related subject, we invite attention to question 480 on page 2060 where the witness is asked what made him conclude "that Clark was running from Mr. Post's arbitrary north end of base line to Mr. Post's supposed station one when he measured fifty-five chains and thirty-three feet in a due east line." Now Campbell, defendant's expert, has definitely and clearly stated that Post's locations of Clark's base line and of station one are correct (p. 2454).

A disturbing element is the word "to" on page 17 of Clark's report. Defendant's position is that the entry means a measurement from a monument at some place on the parallel far to the west, along the parallel to station 1; while complainant insists that it means a measurement betwen monument at station 1 and the north end of base line.

The witness, Post, at pages 1934 to 1936 testifies in effect, that the word "to" means the connection between the monument and station 1, and shows that the monument was at station 1, and that it is common to speak of a monument "to," "at," "on" or "for" a station. There is no contradiction of this. At page 2503, Mr. Campbell, expert witness for defendant, makes use of "to" for "on" when he says that his back sight was somewhat up to the side of the notch in the Muleros Mountains instead of saying that it was up somewhat "on" the side of said mountain. This interchange of "to," "at," "for" or "on" is in common use among those in the profession of surveying and engineering, as also by literary witnesses.

Such a meaning of "to" is not at all incongruous. In the American Universities Dictionary we find as the 14th definition of "to," the following: "A common vulgarism for at or in (a place)."

In the Standard Dictionary the 4th definition of "to" is: "by; for; in; of; with; in many obsolete and provincial uses to express relations generally noted by other prepositions and easily understood from the context."

There is one member of this court who like one of the writers of this brief, comes from that part of the United States, where, as he will recall, there has been in common rural use the word "to" for "at," as when one might say he had "a good dog to home."

A few quotations from the immortal Hosea will be of interest.

"I know wy sentinels air sot; you aint agoin to eat us;

Caleb haint no monopoly to court the senoreetas;
My folks to hum air full ez good as his be, by golly!"

"Mister Eddyter: Our Hosea wuz down to Boston."

"Guvener B. is a sensible man:

He stays to his home an' looks arter his folks."

"Ef you get me inside the White House,
Your head with ile I'll kin o'nint;

By gittin' you inside the light house
Down to the eend o' Jaalam Pint."

Defendant relies upon the work of the Scott-Cockrell Commission as to the reestablishment of Clark's monument No. 1, which is set out in the supplementary report of that Commission at pages 22-3 and 3178-80 of the record, but it should be here noted that the reports of that Commission nowhere contain any indication of attempts to reestablish Clark's line by the method indicated by him at page 306 of the Senate Document No. 70, which method is the one adopted by Post, Steen and Turley, witnesses for complainant, as shown by their testimony, and later followed by Owen and Campbell, expert witnesses for defendant. In the printed record at pages 3154 to 3180 are copied parts of the record of the work of the Scott-Cockrell Commission, which will show the correctness of the foregoing statement. Those extracts cover all of the record from the 198th mile to the end. Apparently by accident, on the 205th mile (p. 3168) the surveyors stumbled upon a Clark monument, which, from Clark's map No. 1, they wrongly assumed to be his monument No. 4, the inaccurate and unfinished condition of that map being clearly shown by complainant's witnesses and by the printed report, Senate Document No. 70, and will be apparent to the court upon inspection and examination in connection with the testimony. It will be seen on page 3168 of the record, the Scott-Cockrell surveyors state that there is a mound of stone "in proper position for monumnt No. 4, according to topographical sketch of Clark's," which must mean Clark's map No. 1, and that "it has always been recognized locally as a monument on the Clark line."

It is clearly shown by testimony, as will be hereinafter set forth, especially by Steen at page 2033, that this monument was really No. 3, and if the Scott-Cockrell surveyors had taken the bearings on mountain peaks as shown on page 19 of the Senate Document No. 70, under

the heading "Station 3, Monument," they would not have said this was Clark's monument No. 4. This is shown by Post's testimony at pages 1781-2 of the record, by Steen at page 2033, and by Turley at page 2119. The Scott-Cockrell surveyors do not appear at any place ever to have paid any attention whatever to the important bearings given by Clark from his stations and monuments, by which those stations and monuments can be fixed with absolute certainty as was done by complainant's engineers, Post, Steen and Turley, followed by Owen and Campbell, expert witnesses for defendant. So far as their record shows, the Scott-Cockrell surveyors never paid attention to anything in Clark's record except his unfinished and inaccurate map No. 1.

This error of the Scott-Cockrell work in fixing Clark's monument 4 at what was really the place of number 3 without any verification by reference to Clark's bearings on mountain peaks, has the effect, by scaling from what appears to be number 4 on Clark's map No. 1, as shown by the supplementary report of the Commission (pp. 22-3 and 3178-80 of the record) of throwing Clark's initial point at his monument No. 1 nearly 3000 feet west of its true position, far out in an alluvial valley where it would be in great danger of obliteration by floods.

The Scott-Cockrell Commission was appointed to carry out the purposes of the Congressional resolution, and if the Commission did anything except to reestablish the Clark lines, what it so did, is of no validity. The language of Secretary Marcy in his letter to James Gadsden, dated July 15, 1853, concerning the work of the Boundary Commission is singularly applicable, and is worth quoting as argument in support of plaintiff's position as to the Scott-Cockrell Commission. The following will be found on page 3191 of the record in the present case:

> "By recurring to the treaty, it will be perceived that the Executive Department of the respective governments had no control over the conduct of the Commissioner and Surveyor appointed by them, nor was

there reserved to either one the duty or the right to approve of their proceedings, and no approval or sanction by either or both is required to give them validity. The Boundary Commission was placed beyond the power of either Mexico or the United States, while acting in good faith in the matter committed to them by the Treaty. Their decisions, when made conformably thereto, were valid and effective to bind the two governments without the approval of the executive department of either, and, when not in conformity to the Treaty, such approval could give them no validity. Whatever may have been the opinion of the Secretary of the Interior, or any other Secretary, or of even the President, upon the acts of the American Commissioner, those acts are not now the less open to question as to their binding effect on the United States. Such approval no more corrects an error, if errors there be, than a like Executive approval would correct an error committed by any judicial tribunal of the United States. If indeed there had been an explicit approval by the late executive officers of the decision of the American Commissioner on the initial point, inasmuch as that decision was not made by competent authority and was not a matter at all depending upon executive sanctions, the President is in no way released from his duty of seeing that the boundary line has been run and marked by those who were selected for that purpose, and he cannot without disregarding that duty, acquiesce in a line which has not been thus established."

The resolution of Congress (pages 10 to 12 of record) in effect provides that the Clark lines shall be the boundary lines of New Mexico and authorizes the President in conjunction with Texas to reestablish and re-mark those lines by commissioners to be appointed by him and Texas, the lines specified being those which constitute the eastern boundary of New Mexico, and its southern boundary from the southeastern corner of New Mexico west along the 32nd parallel as far as the Rio Grande, but clearly specifying that it is the line run by Clark which is to be reestablished. It is clear that the work to be done is limited to the reestablishment of Clark's lines, and if the Commission to be created, should go beyond that, its work would be invalid.

Paraphrasing Mr. Marcy's language hereinbefore quoted, we may correctly say that, recurring to the resolution of Congress, it will be perceived that the executive department of the governments had no control over the conduct of the Commissioners to be appointed under that resolution, nor was there reserved the duty or the right to approve of their proceedings and no approval or sanction is required to give them validity; and those Commissioners were placed beyond the power of either Texas or the United States while acting in good faith in the matter committed to them by the resolution; and their decisions when made conformably thereto are valid and effective to bind the two governments without the approval of the Executive Department of either, and when not in conformity to the resolution, such approval could give them no validity.

Moreover, the instructions to the Commissioners, approved by the President, authorized nothing beyond what was set out in the resolution of Congress, and if they had, so much thereof would have had no foundation or validity.

It follows as perfectly legitimate that we are at liberty to show as we have shown, that the Scott-Cockrell surveyors did not reestablish Clark's line on the 32nd parallel, and our surveyors have done so, so far as Clark's monuments 1 to 5 on the 32nd parallel, are concerned.

The character of the Scott-Cockrell work is well shown by its failure to find Clark's Monument No. 5 at station 8, east of the Franklin Mountains, although Campbell had known it for 25 years (p. 2548), and by running its line a fraction over 157 feet north of that monument which Clark says (V. pages 301-2 of the Senate Document No. 70) was "directly east of the Franklin Mountains and on the road leading from El Paso to the salt lakes." We must keep in mind that the Scott-Cockrell Commission was to do no more than reestablish Clark's lines, and in this part of their work, they reestablished only one point on Clark's line and made a mistake in that, calling it 4 instead of 3.

As to monument 5, Post testifies at pages 1939-40 and 1946 that it is at station 8, while Turley at pages 2120, 2122

and 2169-70 testifies minutely about it. He is asked on page 2169 if he could say that the slab of stone (described by Clark at pages 301-2 of Senate Document No. 70) had never moved since Clark put it there, and he answers, "No, sir; I cannot say that, but it has gotten back to the proper point if it has been moved. It may have been somewhat peripatetic, but it is back there now, if it ever was changed." At page 2120 he describes it and says "It would take a good strong man to lift it," and that he did not pick it off the ground, but stood it up on edge. It may not be improper, although not shown by the Record, to say that Turley is about 6½ feet in height, which gives an idea of what he means by a strong man. Probably no one has ever disturbed the "slab of stone" since Clark placed it there in 1859.

It may be well here to consider these monuments on Clark's line as he describes them and some of the uncontradicted testimony about them. Beginning on page 301 of the Senate Document No. 70, he says:

> "I append here a list of the monuments with a brief description.
>
> A. They were not put up at regular intervals, as will be seen by reference to the maps on which they are represented, but on prominent points, roads, and where there was a possibility of the location of land or other question of jurisdiction. They were made of stone or earth, and show the position in latitude or longitude by inscriptions, as also the initial letters of the territories separated thereby, in most cases the dates, too, were added. These inscriptions were cut in on the stone or wood. B.
>
> "MONUMENTS ON 32ND PARALLEL.
>
> "1. Initial point, a pyramid of stone 8 feet high, whitewashed, with inscriptions on all the sides. It stands 600 feet from the bank of the river, and between them lies the road from El Paso to Fort Fillmore.

"2. On the first ridge of sand, built of stone around a stick of timber.

"3. On the first plateau, of a stick of timber; cottonwood tree barked.

"4. On the first spur of the Franklin Mountains cut by line, is of stone, and whitewashed six feet high. All four of these monuments can be seen from the road along the valley.

"5. Directly east of the Franklin Mountains, and on the road leading from El Paso to the Salt Lakes. It is a large mound of earth, capped with a slab of stone bearing the inscriptions."

We have already discussed the important location of monument 1, but the locations of 2, 3 and 4 are of assistance in corroborating the position of No. 1.

No. 2 is on the middle of the first sand ridge, and the shape of that sand ridge is shown in a sketch at page 19 of Senate Document No. 70, which is reproduced in the printed record as plaintiff's Exhibit 79, opposite page 3180 and on defendant's Exhibit 84 following page 3066 (marked 5140). It will be seen that Clark's line strikes the middle of the sand ridge, and yet the Scott-Cockrell line passes over the slope of a ridge at its southern end at which point is located its 207 mile corner which Campbell maintains is the proper position for monument 2 (page 2642 of the printed record). The appearance of that southern end is shown in photographs which are plaintiff's Exhibits Nos. 88 to 92. The witness Turley says there is but one sand ridge between Anthony and the mountains (pp. 2119 and 2123), and Post very clearly shows the same fact and the identity of station 2 and monument 2 (p. 1905).

The appearance of the sand ridge from the west is shown in photographs which are plaintiff's Exhibits Nos. 80 and 81. My recollection is that the original photographs, which are in the record filed in the clerk's office, are somewhat clearer than these reproductions in the printed record. This sand ridge is also shown in plaintiff's Exhibit No. 83 which is a photograph looking back, to the west, from mon-

ment No. 3. On Nos. 82 and 83, looking west, from No. 2 and No. 3 respectively, can be seen the line cut through the brush by Post along Clark's parallel.

Mr. Campbell, defendant's leading expert, at page 2511 of the record says:

> "You will observe that this monument two falls at the extreme end of a gravelly ridge, which is extensively covered by ridges of sand; and, looked at from any point in the valley in the vicinity of the thirty-second parallel, this ridge has the appearance of, and in fact is a sand ridge, to the extent that it is a gravelly ridge largely covered by ridges or banks of sand. The south end of this ridge terminates just where the thirty-second parallel crosses its base, and the surface of the base of the sand ridge, so terminating, is composed of sand; and no one not utterly devoid of imagination would have any difficulty in looking at this ridge from the valley, and calling it a sand ridge, and in saying that a monument erected on this sandy base is erected on a sand ridge."

In view of Clark's sketch already referred to, showing his line striking the middle of his sand ridge, and of the facts disclosed by the photographs, complainant's Exhibits 80, 82, and 83 and 88 to 92, and of Campbell's statements above quoted, and of his further statement at page 2582 that it is a low ridge rising a few feet, and of Turley's statement that there is but one sand ridge, we are compelled to say that no reasonable man, although "not utterly devoid of imagination," can possibly have sufficient imagination to enable him to agree with Campbell, that the southern end of the gravelly ridge or its base should be called a sand ridge, or meets the requirements of the Clark sketch which makes the line cross the middle of the sand ridge, or that a monument on the "sandy base" is on a sand ridge. In opposition to this flight of imagination by Campbell we have the definite evidence of Post, Steen, and Turley referred to a little later herein, that they found stones a little below the crest of what Turley says is the only sand ridge crossed by the line, and verified that spot by Clark's bearings on mountain peaks, as his station 2.

There can be no reasonable doubt of the correctness of the location of monument No. 2, by complainant's engineers, a little below and west of the crest of the sand ridge where they found stones, evidently the remains of Clark's monument and verified this location by Clark's bearings on mountain peaks from station 2 (Post at page 1781; Steen at pages 2032-3, and Turley at page 2119). The Scott-Cockrell record makes no attempt to locate this monument or station.

Monument No. 3 is located with equal certainty by complainant's engineers (Post at page 1781; Steen at page 2033; Turley at page 2119). It is to be remembered that Clark's notes, on page 19 of Senate Document No. 70, distinctly call for a monument at station 3, and complainant's engineer witnesses located that monument and station by the bearings on mountain peaks given by Clark, while the Scott-Cockrell Commission said this was monument No. 4, basing that upon the inaccurate Clark Map No. 1 and disregarding Clark's statement that No. 3 was on the first plateau and No. 4 on the first spur of the Franklin Mountains, locations clearly established by complainant's witnesses by the topography of the country as well as by Clark's bearings.

Monument No. 4 is on the first spur of the Franklin Mountains, and as just stated, its location is clearly identified by complainant's witnesses.

Monument No. 5 is east of the Franklin Mountains and on the road from El Paso to the salt lakes. This is identified with equal certainty as already hereinbefore shown.

Now the Scott-Cockrell surveyors, having made the mistake of calling Clark's monument No. 3 his monument No. 4, and being unable to locate his monument No. 1 (pp. 22-3 of record), resorted to the incomplete map No. 1 in Clark's report as printed in Senate Document No. 70 and "determined the approximate scale upon which said map was made" and taking their erroneous monument No. 4 as a starting point measured the distance indicated on the Clark map to monument No. 1, 3 miles and 73.884 chains, a point between mile posts 208 and 209. It is obvious that, assuming monuments 1, 3 and 4 to be correctly located on

Clark's map, this measurement would be wrong to the extent of the added distance between three and four.

In connection with this location of Clark's monument and station one, a matter which, at first glance, seems perplexing, appears on page 17 of the Senate Document, which will be found in the printed record in defendant's Exhibit 86, one of the exhibits following page 3066; and defendant's counsel seems inclined to magnify the importance of it. Clark's record shows that from station 1, with his instrument pointing east along the parallel, he turned to a bearing on the north end of his base line, the direction being 109 degrees and 26 minutes; and further that he measured an angle at station 1, as the vertex, from north end of base line to a monument, of 70 degrees, 33 minutes and 45 seconds, which added to the bearing of north end of base line gives a direction to a monument of 179 degrees, 59 minutes and 45 seconds, or within 15 seconds of a due west direction, and defendant takes the position that this shows that Clark's monument No. 1, his initial point, is the monument here referred to and that it was on the parallel far to the west of station 1. The absurdity of this is apparent when we consider that it would leave the monument No. 1, the "initial point" of a great survey, and certainly an important point, without any of the means of relocation which Clark gives to his various stations, whether monumented or not, by bearings on mountain peaks which would, as he says, enable any ordinary surveyor to reestablish the line.

Clark's exact language on this point, appearing at page 306 of the Senate Document No. 70, and at page 3133 of the record in this case, in a communication addressed to the Commissioner of the General Land Office, is here quoted as follows:

> "I repeat that under no circumstances could these landmarks be made more substantial or lasting. That some of them will not remain on the 'earth's surface to a distant future' is quite probable; not from the fault of construction or material, however, but from the accident of their position and surroundings. To guard against this very contingency, their accidental or wilful destruction, I had the boundary line con-

stantly referred by triangulation to prominent physical objects which can be easily identified, and which will never in all human probability be 'obliterated by natural and other causes.'

What I endeavored to convey to you in my report bearing on the permanency of the monuments was that even in the event of their destruction, the line could be reestablished by a common surveyor without a repetition of the scientific and expensive operations employed in determining the parallels and meridians constituting the boundary."

And such a reestablishment, as far as material to this case, is exactly what was accomplished by Post, Steen and Turley, and by Owen and Campbell, defendant's witnesses, after seeing the results of the work of complainant's witnesses.

In the work of the Scott-Cockrell Commission, which was authorized only to reestablish Clark's lines, absolutely no attention was paid to those statements by Clark, and in no instance was any attempt made to reestablish any monument or station of Clark's work by the method pointed out by him "by triangulation to prominent physical objects" which would have been the natural method even without the explicit statements above quoted, when his notes show such triangulation in detail.

The whole of Campbell's argument as to the location of Clark's monument No. 1 west of his station No. 1 on the 32nd parallel, at a distance of 55 chains and 33 feet, depends upon his location of Clark's observatory by angles from stations 13 and 14 on the Frontera meridian, north end of base line and station 1 on the parallel, coupled with the appearance on Clark's map No. 1 of an "observatory" directly south of his monument No. 1.

The location of the observatory is a matter of no importance, in itself, for the following reasons:

That observatory was no part of Clark's triangulation system as we will now show.

At pages 3130-1 of the printed record copied from page 296 of Senate Executive Document No. 70, in his report dated September 30, 1861, John H. Clark, Commissioner and Surveyor for the United States, on the Texas-New Mexico boundary on the 32nd parallel states on page 3131 that

> "The plan of survey was to determine the line in latitude with a zenith telescope as often as it might be necessary to insure accuracy, and in longitude by triangulation and direct measurement from the initial point—the longitude of this point being found by transfer from Frontera, a well established station of the Mexican Boundary Survey. From the meridian of each observatory a new tangent was turned, and being traced both east and west, the surveyor's line was seldom more than thirty miles without a check."

And on page 279 of said report of John H. Clark he makes a tabulated statement of 32 astronomical stations that he used in making his survey. And while in this tabulated statement he thus mentions that he had 32 astronomical observatories, he does not tie any of them to prominent objects, such as mountain peaks, etc., natural objects on the ground, as he does his stations upon the line of his survey.

It is also a fact worthy of note that Clark's stations are always placed at points upon the line of survey which have the advantage of clear vision in any and all directions. It is also worthy of note that on page 301 of said Senate Executive Document No. 70, page 3131 of the printed record, as to his monuments he states:

> "A. They were not put up at regular intervals, as will be seen by reference to the maps on which they are represented, but on prominent points, roads and where there was a possibility of the location of land or other question of jurisdiction,"

and at many points in his notes he mentions monuments at his stations. It furthermore is worthy of note that there is no place in Clark's printed record where there is any mention made of a monument being constructed where it is stated that it was not at a station.

From Clark's record it is apparent that he had data in relation to the Frontera Observatory which had been previously established during the making of the United States Mexican Boundary Surveys, and in the establishment of Frontera he had himself assisted under Major Emory (p. 2609 of record), and he undoubtedly used such data, and he also mentions observatories at or near the initial point, but with the exception of the Frontera Observatory which he used as stated on page 3131 of the printed record, he did not tie his observatories to natural prominent and permanent objects on the earth's surface. Obviously he used his observatories as temporary mechanical means of checking the course of his lines and he has no interest in them further than seeing that the line was properly and correctly run on the ground.

It is a well known fact that in making surveys for the United States Government of the various boundary lines or subdivisions of the public domain, the surveyor is directed by special instructions to frequently refer his instrument to courses established by astronomical observations upon the sun or north star or other heavenly bodies by which to orient his work and his instrument, or the course of the line as laid down upon the earth's surface. In the earlier surveys complete records of these astronomical observations were not always reported. In any event the observatories were but temporary affairs the use of which was only to check the proper working of the instrument for the survey or the proper course and orienting of the line surveyed, and after the corners were placed upon the ground were not considered of further use any more than any scaffolding is of use after the construction of a building is completed. For this reason Clark saw no reason to encumber his record with lengthy descriptions of his observatories, and did not go to the trouble to permanently fix them by recording bearings to mountain peaks and to other prominent features of the topography thereabouts. However, he was careful to establish his observatories that he might keep his instruments checked as to accuracy, and upon which to adjust them should they become thrown out

of adjustment in any manner, or upon which to give instructions to his assistants as to the proper manner of doing the actual work of running the lines, but after same was accomplished he abandoned them; and particularly near his initial point Clark undoubtedly placed more than one observatory. In his equipment, as mentioned at several points in his record, he had a duplicate set of instruments (see p. 269 of Senate Document No. 70) and he undoubtedly wished to check one set against the other particularly at or near the initial point, and as he was just beginning his work and wanted to have practical demonstration of his assistants, it is reasonable to suppose that he did establish more than one observatory there; that they could be used at the same time and for possibly different purposes. Further, it was in the winter time when the river was low, and it is entirely possible that he may have placed his camp, or a portion thereof, on the west side of the river as it then ran, as it would be easily fordable, and that he might have established an observatory at or near his camp for his own convenience in making meridian or other observations. But whether or not he had more than one observatory at or near the initial point, it is no more a part of his completed survey than a whetstone, which a carpenter used on which to sharpen his tools, would be a part of an edifice which he constructed with those tools. If the surveying instruments are not kept in proper adjustment he cannot do his surveying in a true and workmanlike manner, and the only means he can have at hand on which to test them is to occupy a station or observatory upon a true meridian which of necessity must be previously established thereon, properly setting his instrument and then observing its falling; which if true will be upon said meridian, and if not true this falling would not be upon the meridian, and it would then be necessary so to adjust the instrument that its falling would be upon the true meridian. Many surveyors usually, for their own individual convenience, in the working up of the field notes and construction of the permanent record, place such "observatory" locations upon their field "sketch plat," but they seldom, if ever, report an "observatory" upon a cor-

pleted map because of its being nothing more than a temporary affair and of no further use after the completion of the field work and of the placing of the corners upon the ground, which is generally the principal aim and object of any survey that is properly and permanently marked upon the earth's surface.

This proves the Clark map No. 1 to be in reality only a "field sketch index plat," or "topographical sketch" as the Scott-Cockrell surveyors characterize it (p. 3168 of the record) which was worked over by a draughtsman in the haste in which Clark was compelled to turn in his work in its unfinished condition at the termination of the Texas Boundary Commission Survey, and undoubtedly was never intended by him to be a part or portion of his permanent record of the survey of this boundary line.

As hereinbefore stated there is no evidence in the report of the Scott-Cockrell Commission that they attempted to reestablish Clark's stations or monuments of his survey by using his bearings to natural objects as has been done by the surveyors and experts for both complainant and defendant in this action. But accidentally finding Clark's monument at his station 3, they erroneously called it monument 4 as shown at page 3168 of the printed record and then scaled from that point to a point which falls out in the valley at which they attempted to reestablish Clark's "initial point." Because of this erroneous method, defendant's experts lay great stress upon the fact that, on this field sketch plat which is marked as Clark's map No. 1 in the printed report contained in Senate Executive Document No. 70, there is shown a point which is marked "observatory" the position of which is south of what is marked as his "initial point." To prove that this was in fact the case, and that the "initial point" in reality should be near, or about where the Scott-Cockrell Commission resurvey has placed it, has been one of the chief aims of the defendant's experts and attorneys in this case. However, it is well to note that the experts, Campbell and Owen, surveyors for the defendant (p. 2556 of record), apparently had more trouble in bringing all their lines by "adjust-

ment" as they state at pages 2470, 2613 and 2649 of the record, to one point of intersection to locate the "observatory" of Clark at a point which would support their contention, than in fixing or locating any other station in Clark's work upon which they engaged themselves. This was also a problem for the expert surveyors for the plaintiff herein, and, as shown by witnesses Post, at pages 1904-5, Steen at pages 2061-2-3-4-5, 2067, 2070, 2082-3, 2092 and 2095, and Turley at pages 2162-3, 2164-5-6-7, 2173-4, 2182-3-4, they found it impossible, in the unfinished and erroneously printed record contained in Senate Executive Document No. 70 of Clark's work, and because Clark turned his angles both to the right and to the left, and because of natural objects on the ground, properly to locate this observatory, and for the reason above mentioned, that the observatory is only a temporary structure erected in the course of a survey to assist in the actual execution of the work in the field, and is in reality no vital part of the survey so done, said experts for complainant discontinued any further attempt to locate Clark's observatory or observatories.

While placing so much stress upon the relative position of the point marked "observatory" with respect to the location of Clark's "initial point," defendant's experts have disregarded the clearly defined "El Paso and Ft. Fillmore Road" marked on Clark's sketch map which lies between monument No. 1 and the river as to which Clark, at page 3131 of the printed record and on page 301 of Senate Executive Document No. 70 states as follows:

> "(1) Initial point, * * * It stands 600 feet from the bank of the river and between them lies the road from El Paso to Ft. Fillmore."

The location of that old road was pointed out upon the ground to engineer Post before he constructed complainant's pleading map in this case and is about 130 feet west of the present railroad track, 50 feet east of which is station one on Clark's survey at which was discovered buried in the sand the remains of the old mound of stone as testified to by Post on pages 1780-1, after he had se-

cured a copy of Clark's survey record as printed in Senate Executive Document No. 70, and located this station 50 feet east of the railroad track, he measured westward to the bank of the old river as pointed out upon the ground by the old witnesses and that distance was found to be 600 feet as called for in Clark's record, which is a remarkable corroboration of the testimony of the old witnesses, as has heretofore been mentioned.

In this connection we invite careful attention to *map No. 1* as contained in the *printed record of Clark's survey* in Senate Executive Document No. 70, and to its defects and inadequacies in part apparent on its face, and in part demonstrated by facts in contradiction, on the ground, shown in the record of this case.

As shown at page 305 of the printed record in Senate Executive Document No. 70, Clark states that "the line runs through a country full of striking features which can be easily identified; and being referred to in the note books and laid down on the maps, they can be taken as starting points," etc., but the topography of that region, and particularly along the 32nd parallel east from the Rio Grande through the Franklin Mountains, is not correctly shown on said "topographical sketch" which is map No. 1. By a careful examination it is apparent that the horseshoe shaped ridge or plateau, as testified about by Campbell at pages 2512, 2616-17 and on defendant's Exhibit 63 opposite page 3373, also by Campbell at pages 2559 to 2561, and by Owen at pages 2690-1, by Post at pages 1941-2 and 1944, by Steen at pages 2032, 2033, 2103-4-5, and by Turley at pages 2120, 2121, and as shown on complainant's Exhibits 79, 83 to 87, and on defendant's Exhibits 63 and 65, is the "first plateau" and is the same as is mentioned by Clark on page 3132 of the record, taken from page 302 of the Senate Document No. 70, on which is placed monument No. 3, and it is not properly or correctly shown on said "topographical sketch," map No. 1. Further, said "topographical sketch," being Clark's map No. 1, does not show the first sand ridge on the parallel running east from the Rio Grande as is shown on his field sketch which appears as complainant's Exhibit

79, and at page 19 of Clark's printed report and as 51a after page 3066 of the record in defendant's Exhibit 3. Also, just westerly of this sand ridge, on which was located Clark's monument No. 2, as stated by him at page 301 of the Senate Document No. 70, and shown in complainant's Exhibit No. 61 at page 3131 of the printed record "on the first ridge of sand" is an arroyo, or a large water course which drains the westerly side of the Franklin Mountains as also the north side of the plateau mentioned by Clark and a considerable area of the region thereabout. The sketch shows numerous arroyos and ravines, but does not show this, one of the principal lines of drainage of that region as shown in testimony of the witness Turley at pages 2162-2191 of the record.

At page 2512 of the printed record Campbell, expert witness for defendant, speaks of "an invisible valley" lying east of the plateau mentioned by Clark, and as shown on defendant's Exhibit 63, as also on defendant's Exhibit 65, and as testified to by witness Owen, at page 2691 of the record, and also by witness Altman at page 3004 of the record. This depression or "invisible valley" which separates the plateau so-called by Clark from the first spur of the Franklin Mountains, is not clearly shown on Clark's "topographical sketch," or so-called map No. 1.

As stated by witnesses, Post at pages 1939, 1940, 1942, 1945, Steen at page 2097, and Turley at pages 2120, 2121, Clark's monument No. 3 is not properly located on the map No. 1, with respect to the intersection of the Frontera meridian with the 32nd parallel as shown on said map No. 1.

In like manner, near and southerly from the point marked on said "topographical sketch," or map No. 1, as "initial point" is placed a small square with a point marked in the lower right hand corner thereof, as referred to by witnesses Steen at pages 2095-6, 2102 and Turley at pages 2125-6, 2167, 2184, and by scaling on map No. 1 this square appears to be at about the proper location for Clark's point or station recorded as "a (Evans)" on page 17 of the printed record of his field notes; as set out in the testimony

it is worthy of note that by turning angles to the left (pp. 1904-5) this is probably the observatory and should have been so designated on the map if any point thereon was to be so marked and designated. Defendant's expert, Campbell, at page 2601 says, "There is nothing in Clark's record * * * so far as the record shows, that has any connection with that figure on the map No. 1, * * * and I find that it actually is not connected in any way with Clark's system of surveys."

However, just what Clark meant, or his topographer or draughtsman had in mind while placing same on the map, is still a mystery so far as the labors of experts in this case on both sides have developed.

There is placed on said "topographical sketch," being Clark's map No. 1, contained in said Senate Executive Document No. 70, south of Frontera observatory, a cross which is marked "Initial Pt. Mex. Bdy." which, whether figuring from the parallels and meridians as placed on said map No. 1, or from the Frontera observatory, occupies the proper location, with respect to these other definite points, for Monument No. 1, on the international boundary between the United States and Mexico, but it is shown on the Clark sketch as being located on the east side of the river while its actual position on the ground is several hundred feet west of the Rio Grande, as testified to by witnesses Steen, at page 2099, Turley, at pages 2124, 2136-7 of the record, by Campbell at pages 2602, 2608-9, and Owen at page 2709 of the record.

There is placed upon this said "topographical sketch," being Clark's map No. 1 from Senate Executive Document No. 70, a road, the course of which is northerly and northeasterly from Clark's initial point on his survey of the 32nd parallel and there is printed thereon "puerta de los alamitos" (door or opening of the little cottonwoods) and that road passes through the "Puerta de los Alamitos."

As is shown by Steen at pages 2098-9, by Turley at page 2125, and by Campbell at page 2602, this name of the

"Puerta de los Alamitos" is placed on said map No. 1 over six miles north of its true location on the ground.

All of these things which appear upon this "topographical sketch," or map No. 1, clearly show on the face of the sketch such inaccuracies as thoroughly discredit it, but they are largely due, no doubt, to the haste indicated by witness Turley at pages 2120-1, 2126, 2135-6, 2139, 2140-1, and 2184 of the printed record, because Clark was peremptorily ordered to turn in his work in its then unfinished, and, as he states, unavailable, condition. This topography was undoubtedly placed upon said map by one or all of the three draughtsmen, or topographers whom he then had in his employ as he states on page 307 of the Senate Document No. 70, and in the haste with which they worked in the attempt, as he also states therein, to put them in a condition which would be intelligible, they did not check their work and thus it is that many grave errors have crept into his record.

The record shows that John H. Clark was not instructed to make a survey of the course and position of the channel of the Rio Grande at any point below his initial point on the 32nd parallel, and there is no evidence that he did actually make such survey on the ground except as contained in his field sketch shown in complainant's Exhibit 26, after page 3120 of the printed record, marked 5225 (which should be 5235), and as shown in defendant's Exhibit 84, being photographic copy of page 5 of Clark's printed report and shown next after page 3066 of the printed record, on which appears the course marked "Rio Grande River" from a point a little below Frontera to a point about two miles above Frontera, which, together with the point at or near his station No. 1, is the only evidence of an actual survey on the ground and of the course and position of the Rio Grande as reported by Clark, and therefore, we must conclude that the Rio Grande and its position, course, and location as shown on said "topographical sketch" or map No. 1, were merely sketched in by the topographers or draughtsmen to show more or less the conditions in that region, and not in any manner to indicate the exact location of the Rio Grande at

that time, but is enough to give an idea of what might be found in passing through that section (Turley, at page 2142).

This fact is the more evident when a comparison is made of what is indicated at and near Frontera on the said field sketch, and on said "topographical sketch," being map No. 1, where is marked Frontera Observatory. By a close examination it will be noted that from a point between said Frontera Observatory and the point marked by a cross for "Initial Pt. Mex. Bdy.," the course of the Rio Grande on said sketch is shown to bend far to the eastward which would throw it out on the foot of the mountain as shown by all of the maps of that part of the river in the record. Also at and near Frontera the course of the Rio Grande, as sketched upon said map No. 1 is shown easterly from a point about two miles west of Frontera, giving the river a course from west almost directly east and passing about one-half mile to the south of the point marked for Frontera Observatory.

This representation of the fact, which was made in the office by a draughtsman, is manifestly an error when a comparison is made with the sketch made in the field at the time the triangulation was done, and when the accidents of the terrain, or permanent topographical features on the ground were taken at the time Clark's surveying party actually ran out on the ground his system of triangulation as placed on said field sketch, complainant's Exhibit 26, after page 3120, and defendant's Exhibit No. 84, being photographic copy of page 5 of Clark's printed record, shown at page 3066, from which it is apparent that, from a point more than two miles above Frontera and above his triangulation station marked "b" which was on a high point at the edge of the valley, the Rio Grande flowed in more of a southerly course along the base of the hills bordering the east margin of the valley as stated by Campbell (p. 2811) and so continuing, passed within a few hundred yards of said station "b" and in a general southerly or southeasterly course until it passed beyond the section shown upon said field sketch. The attention of the Court is partic-

ularly directed to the fact that the course of the Rio Grande as shown by Clark's sketch made while in the field, places the Rio Grande and its course and position in the exact locality pointed out by old witnesses in this case and as placed on complainant's pleading map by engineer Post before he had any knowledge whatever of the printed report of Clark's surveys in Senate Executive Document No. 70, first session of the 41st Congress, which is a remarkable corroboration of the testimony of the old witnesses in this case on behalf of complainant.

For the purpose of this action it is one of the most unfortunate things in connection with the surveys, field notes, maps, and printer's record of John H. Clark, that he was so peremptorily ordered to turn in his work, and as he says (page 3136 of the printed record, complainant's Exhibit No. 61, taken from page 309 of Senate Executive Document No. 70) that he had to transfer the archives and property of the Texas Boundary Survey in its "unfinished and unavailable condition" in obedience to the direction of the Secretary of the Interior and upon the demand of the then Commissioner of the General Land Office on January 21, 1862. At page 3133 of the printed record (in complainant's Exhibit 61), in his letter dated October 14, 1861, addressed to the Commissioner of the General Land Office, Clark says:

> "That the survey has been 'long in progress' cannot be asserted with justice, if any regard can be had for its great extent and character; and the imputation of unnecessarily protracting it cannot be sustained, nor would it be made by anyone having a correct knowledge of the kind and amount of work I have accomplished both in the field and in the office.
>
> "This survey has been a work of the first magnitude. To fix a boundary line 800 miles in length, it was necessary, because of physical obstacles, to make more than fourteen hundred miles of survey checked by nearly 4000 astronomical observations, besides many miles of reconnaissance surveys. The office work in addition to the computations of all astronomical observations consists of the computation of the triangulation, the platting and drawing of 15 detail

maps delineating the topography along the boundary line in the highest style of the art, and a general map showing the boundary in connection with all the adjacent territories. * * * * *

"You state that you are anxious to close my work, and that having a large clerical force applicable to my assistance, you would be glad if they could be made to expedite the completion of my business by diminishing my force. To this I can only reply that we have no use whatever for any clerical force. There are only three persons now employed, and these are topographers. They were in the field as my assistants and being familiar with the details of the survey, are alone competent to properly execute the topography that remains to be done. In compliance with your wish that the work be closed by the middle of next month, it shall be prosecuted with that end in view, and be put in as complete a form as the time will permit, though I deeply regret that the result of a survey prosecuted with so much labor and care should be so hurriedly and I fear so unprofitably disposed of."

Again in his letter dated January 10, 1862, as shown in complainant's Exhibit No. 61 at pages 3134-5 of the printed record, Clark states:

"The astronomical work, as I reported, is finished and ready to be turned over. The geodetic part of the survey is also all complete except the maps. I have so far progressed with the maps, however, as to be able to state that I can get them in a condition to show an intelligible delineation of the easterly line in about six weeks—say some day during the last week of February next, when they also will be ready for transfer."

And at page 3135 of the printed record in complainant's Exhibit No. 61, under date of January 16, 1862, only six days later, we find that the Secretary of the Interior, in his letter to the Commissioner of the General Land Office wrote as follows:

"In answer to your communication of the 14th inst. I have to state that in my judgment it will be best at once to terminate the Texas Boundary Com-

mission and require a transfer of all the papers and documents and all property belonging to the U. S., and used in that survey to the General Land Office."

And in reply, John H. Clark, on January 20, 1862, stated:

"I have received a copy of your communication of Jan. 16th inst. to Mr. Edmonds, Land Commissioner, directing that the work of the Texas Boundary survey be terminated at once without reference to its unfinished condition. It is not my purpose, in thus addressing you, to obtain a reversal of your decision, but simply in justice to my feelings and my self respect to repel the accusation of Mr. Edmonds upon which it appears your judgment is based."

Then follows a statement regarding the finances of the boundary survey and its then balance on hand, following which this appears:

"This inaccuracy is in accord with the course of the Land Office towards my work, which it has never given itself the trouble to examine, and cannot therefore appreciate its scientific merits or practical bearing.

I was exceedingly anxious to finish a work I had prosecuted with so much labor and success; and in transferring it thus, most respectfully protest against being held responsible for its unfinished and unavailable condition."

And the following day, January 21, 1862, Clark stated in his letter of transmittal of his archives and property:

"In obedience to the direction of the Secretary, issued at your suggestion, I have to state that I am ready to transfer the archives and property of the Texas Boundary Survey. In consequence of that suggestion, upon which the Secretary's action is based, I am constrained to address him a letter, a copy of which is inclosed."

From all of which it is apparent, as also from the unfinished condition, as related by Clark, of the maps, sketches,

and field notes thereto pertaining which are contained in the printed record of his work, in Senate Executive Document No. 70 which is, as stated by him, "a work of the first magnitude," that the record we have of his work is so unsatisfactory and largely "unavailable."

The method adopted by the surveyors of the Scott-Cockrell Commission, as shown in the supplementary report of that commission (pp. 22-3 of the record), for the location of Clark's monument No. 1, by scaling distances between monuments as shown on Clark's map No. 1, while unsafe and unsatisfactory, because the scale applied by those surveyors, which they call only an "approximate scale," is one of 201.4234 chains to the inch, or 13,293.944 feet to the inch, yet a careful scaling on the map from the position of monument No. 2 on the first sand ridge as it appears on Clark's map No. 1, fixes his monument No. 1 at the place established by Post as the proper location for that monument.

It must not be overlooked that there is no scale given on that map (p. 6931 of the record), and that to determine the "approximate scale," the only method available is the one indicated by the witness Post at page 1931 and described by him at pages 1947-8, of taking the longitude lines on the map and from them determining the scale, and this must have been the method adopted by the Scott-Cockrell surveyors, as the results obtained by Post are not materially different from theirs (p. 1933 of record). He obtained one figure of 13,079 feet to the inch and another a little above that, but he adopted for use a scale of 13,100 feet, or only about 194 feet to the inch less than that of the Scott-Cockrell surveyors, which would not, as he testifies, make any great difference. He testifies also at page 1942, that scaling back to the west from monument No. 2, on the first sand ridge, the location at which of monument No. 2 we have already discussed, monument No. 1 corresponds to station No. 1, where complainant contends that monument No. 1 was located.

Defendant's attorneys and experts lay great stress upon the notations contained in the printed report of John H.

Clark on pages 16 and 17, of Senate Executive Document No. 70, which is shown No. 5131 and 5132 of defendant's Exhibit 84, being photographic copies of pages 16 and 17 of said Clark's report, which show two angles turned from station 1, which angles, when added together, make or sum up nearly 180 degrees, which would form a straight line to the west, as hereinbefore stated, and indicate a point to the west of station 1, at which they claim Clark established his monument 1 and initial point "55 ch. 33 ft." distant from his said station 1. On pages 2556-7-8 of the printed record Mr. Campbell sets this out with considerable particularity, as also does defendant's expert, Owen, at page 2686.

However, on pages 2470, 2487, 2494, 2557 and 2613 defendant's expert Campbell states that there are errors in Clark's report as printed. Also at page 2548 Campbell admits that Clark's record "is defective and incomplete."

Also on page 2602 Campbell admits that Clark's map No. 1 on its face contains gross inaccuracies. Also at page 2459 Campbell states that Clark turned angles to the left, as well as to the right. Further, at page 2551 witness Campbell states that Clark placed certain monuments at stations.

On page 2584 Campbell states Clark's map No. 1 is not true in all details. On page 2462 Campbell states angles are missing on the Frontera meridian triangulation and there is an apparent gap in the record of Clark's surveys.

On pages 2489 and 2490 Campbell alleges finding stone mounds at Clark's stations at points whereon Clark does not report having established monuments, as also does the witness Owen on pages 2635 and 2636.

By analysis of these statements and facts it is evident that the interpretation which Campbell makes of the statement "N. Base Line" being a "section of the 32nd parallel north of the Base Line" instead of meaning "north end of the Base Line," is extremely far-fetched, especially when taken in connection with the fact that n. base line or N. base line, or N. end of base line, occurs in so many other

places where it cannot possibly mean anything except north end of base line (see pp. 1908-9 of record). This is on a par with the entire conclusions deduced from taking this fortuitous placing of notations in the Clark record as printed and adding them together to form a straight line west from station 1, to support the contention of the defendant that the initial point of monument No. 1 was placed "55 ch. 33 ft." west of Clark's station 1.

Since Mr. Campbell himself mentions finding Clark's stone mounds at stations in so many places where Clark does not mention a monument, it is reasonable to suppose that Clark also may have had a monument or stone mound to mark the point at "N. Base Line" and another on the bank of the river as a back-sight west of his station 1, as is suggested by plaintiff's expert witness, Post, at pages 1905-6, 1936 and 1938, by Steen at page 2030, and Turley at pages 2186-7.

Granting that Clark actually measured the angles, adding them together so as to show a west line, we say it is a very usual thing for surveyors to place back-sights to guide in the progress of the chainmen or in the projecting of the line in the direction to be run, and that back-sights are one of the commonest things to be found upon a survey line and it may be called a back-sight or a monument or any other name to designate it, and as admitted by defendant's experts, the printed record and maps of Clark's report contained in Senate Executive Document No. 70 are very defective and incomplete and it is very difficult, if not impossible, to determine precisely what occurred at this point, Clark may have turned one of those angles to the left, instead of to the right, which would greatly change its meaning.

However, it is not necessary or proper, in the determination of what Clark did in the establishment of his survey that this one point be singled out and considered important.

Clark states that he placed monuments at stations, and there is no place in the printed report where he states that he placed monuments in any other locality than at, to, on,

or for his stations or that he placed them in positions where they were not tied to natural objects.

Many things might be inferred from this incomplete and inaccurate report of Clark's, which Clark himself said was "unavailable" and unfinished when he turned it in, the difficulties of which have been multiplied by typographical errors creeping in during the printing, as is admitted by experts for defendant and as stated by witness Post at pages 1783, 1785, 1786, 1893, 1900, 1913, 1914 and 1929; by the witness Steen at pages 2057, 2060, 2075, 2083-4, 2098 and 2099; and by the witness Turley at pages 2113, 2114, 2115 and 2116, 2146, 2147, 2148, 2149, 2156, 2157, 2158, 2159 and 2162, 2166, 2183 and 2185. That Clark turned and recorded angles to the left as well as to the right is indicated by the witness Post, at pages 1912-3, Steen at pages 2062-3, 2082-3, 2092, and Turley at pages 2183-4.

Clark undoubtedly had back-sights or monuments at the bank of the river, 600 ft. west of his station 1 on the 32nd parallel, and at "N. Base Line" as above stated.

Also as stated by the witness Turley on page 2125 Clark's map No. 1, in one of its inaccuracies when compared to conditions on the ground, shows hills which would protrude more than a mile into the valley, and shows the initial point too far west of the Frontera meridian; and also as stated by the witness Post at page 1938, Clark's monument No. 3 is east of the Frontera meridian, while the map No. 1 shows it west of that meridian. As shown by Clark's description of his monuments, as set out on page 301 of the printed report in Senate Executive Document No. 70, and as shown at page 3132 of the printed record, monument No. 3 "is on the first plateau" which, as the testimony shows, agrees with the location of Clark's station No. 3. And as shown on map No. 1 and as on defendant's Exhibit 65 the Frontera meridian intersects the 32nd parallel about 2000 ft. west of the point for station 3 on the ridge rising out of the plateau.

These many inaccuracies tend to bring about considerable confusion in the work at this time and much difficulty

in determining, from the printed record, which is admitted to have so many errors, the actual conditions upon the ground.

However, as is testified by Campbell on page 2454, and by Owen on pages 2651 and 2666, and by Campbell on page 2810, defendant's experts agree with experts for the plaintiff in the method of making the surveys necessary for the presentation of this case, and there is no controversy as to the location of station 1.

Clark states, as shown on page 3131, in plaintiff's Exhibit 61, that his monument No. 2 was "on the first ridge of sand" and if monument No. 1 were placed at a point "55 ch. 33 ft." (2783 ft.) west of station 1, then in scaling the distance on map No. 1 between monument No. 1 and monument No. 2 would not by nearly 3000 feet reach the "first sand ridge cut by the line." Moreover, if monument No. 1 is placed at station No. 1, then by scaling therefrom on said map, monument No. 2 will be at station 2 "on the first sand ridge," where Clark placed it, as he states.

This conclusively proves that the adding of the angles as has been so ingeniously and cleverly done by experts for the defendant around station 1 does not mean or indicate that Clark, having his instrument pointed east along the 32nd parallel, turned those two angles to the right and brought his instruments to rest at a point west along the 32nd parallel, and that he therefore placed his initial point to the west of station 1. But it does conclusively prove that the initial point and monument 1 were located at station 1, as is the contention of the complainant in this case.

Defendant's counsel laid much stress upon the "chronological order" in which Clark did his work at the commencement of his survey as reported on page 16 of the Senate Document No. 70. As shown by complainant's expert witness, Turley, on pages 2152 and 2186, this matter of the chronological order of doing the work is clearly explained. It is an evident and conclusive fact, judging from the manner in which Clark tied in his work by bearings on prominent natural objects if the chronological order, as inter-

preted by defendant's counsel, is correct, that had Clark already placed his initial point and monument 1 at "55 ch. 33 ft." west of his station 1, he would have taken bearings on or from it, a monument "8 ft. high" and plainly visible from "N. Base Line," and as is indicated by complainant's expert witness Post on pages 1786 and 1901, Clark took more bearings at his "N. Base Line" and "S. Base line" than around any other of the stations of his survey.

Therefore, inasmuch as we find no bearing whatever recorded from "N. Base Line" to a monument west of station 1, which would be northwest of "N. Base Line," or from any other point to such a monument, we can safely conclude that Clark's initial point or monument 1 was never so placed at "55 ch. 33 ft." or at any other distance west of station 1, but in fact was placed upon, at, to, for, or on, station 1 to mark the beginning point so that it might thereby properly have bearings on the prominent objects in the topography thereabouts, as contended by complainant herein.

Counsel for Texas put in evidence a number of extracts from Bartlett's "Personal Narrative," to which they seemed to attach much importance, but until they point out the value of those extracts, we will content ourselves with saying that we are unable to find in any of these things taken from Bartlett's Narrative, anything which throws any light upon the present controversy. That book of Bartlett's was in no way official, but was a private publication and bears no indication of being an official report and the record shows that it was not (pp. 2316-7), and yet counsel for Texas, at pages 2086-7 of the record declares it to be a "report of his work, made under the instructions of his government, and made his duty by law"; but there is absolutely nothing in the record of this case to support those statements.

A further interesting corroboration of the accuracy of the memory and statements of the old witnesses as to the location of the old river, is to be found in Post's testimony beginning on page 1782, which shows that he located the

astronomical point of Frontera from Clark's notes, near the place pointed out by the old men as the location of White's Ranch, or Frontera.

SECOND.

Examination of the Texas surveys, beginning with No. 154 and running west, so discredits them as to deprive them of any weight as to the location of the old river.

Before beginning a discussion of these surveys, it may be well to state, in a general way, what they are and what defendant hopes to prove by them. It is clearly intended by these surveys to show the course of the river west of Frontera and over to the western side of the valley. Examination of defendant's Exhibits 62 and 65, which are maps made by Campbell and Owen respectively, shows these surveys as claimed by defendant, and the clear purpose of arranging them as they are shown; but the marked difference between these two maps, as hereinafter discussed, will be apparent at the first glance and must not be overlooked.

Beginning with No. 154, made in November, 1859, near Frontera, these surveys purport to run from there west and to be tied one to another and to the river at their southern ends; and they are Nos. 155, 158, 156, 157, 259, 260, 261 and 262. Of these, 259 to 262 purport to have been made long after the time of the great change in the course of the river, which has been testified about by many witnesses as having taken place from 1862 to 1864, when the river may well have been at the place indicated by those surveys, but the others were all made earlier.

Survey No. 154 (p. 3327) is based upon ties to monuments Nos. 2 and 3 on the international boundary line, and to an old lime kiln, the location of which is not in dispute, and to survey No. 1 made for Moses Hughes. This survey 154 is shown to begin for its southeastern corner at a stake on the bank of the river.

Complainant insists that these ties for No. 154 are inconsistent with one another as will be hereinafter shown in

detail, and as a result No. 154 can be located in four different ways, of which three are impossible locations, but it will be obvious that a correct location of No. 154 is essential to any satisfactory locating of the other surveys.

Survey No. 155 (p. 3323), begins at a stake set on the bank of the river for the upper corner of No. 154.

Survey No. 158 (pp. 3316-17) begins at a stake on the bank of the river for the upper corner of No. 155.

Survey 156 (p. 3313) begins at a tree on the bank of the river, which bears N. 40 degrees W., 1000 varas from the upper corner on the river of survey No. 155.

Survey No. 157 (p. 3310) begins at a stake which is also the S. W. corner of survey No. 156.

Survey 259 (p. 3306), made in 1871, begins at the N. W. corner of No. 157.

Survey 260, made in 1871 (p. 3303), begins at the S. W. or upper corner of No. 259.

Survey 261, made in 1871 (p. 3399), begins at a stake set for the S. W. or upper corner of No. 260.

Survey No. 262, made in 1871 (p. 3295) begins at the S. W. or upper corner of No. 261.

Defendant's experts have been considerably bothered in their attempts properly to locate these Texas surveys and lands covered thereby.

Joined thereto on the westerly side following in their order up the river are surveys 155, 158, 156, 157, 259, 260, 261 and 262. Each of these surveys has, as one call, the river as it was alleged to be flowing at the several times of making the surveys, or the resurveys thereof, and each is joined to the survey lying next to its easterly side, except 156 which is not tied to 158 but to 155.

Complainant invites the attention of the Court to defendant's Exhibits 62 and 65 in order that the manner of fixing these said surveys by defendant's experts, Campbell

and Owen, respectively, may be understood. If these surveys were platted according to the calls in the field notes which are of record in El Paso County, copies of which, with many others, are in Vol. VI of the printed record, beginning at page 3223, there is not room enough in the valley to contain them and they would extend far out on the foothills west of the course of the river, as has been testified by Post at pages 2874-5, 2877, 2879-80, and by Turley at page 2128, and as is admitted by defendant's expert, Campbell, at pages 2537-8.

In constructing defendant's Exhibit No. 62, which is found at page 3372 of the printed record, defendant's chief expert, Campbell, shifted the entire block of surveys, composed of Nos. 259, 260, 261, 262, 265 and 264 far to the northward and intruded them into survey No. 173 of the Canutillo grant.

But defendant's expert, Owen, platted and placed said surveys on the map, designated as defendant's Exhibit 65, so as to tie surveys 264, 265, 261 and 262 to the Canutillo grant survey as called for in the field notes of said surveys and clipped the southern bottom or lower river boundary line of each of said surveys in such a manner as to place the course of the Rio Grande against the foothills along the western margin of the valley, regardless of the calls contained in said field notes.

It is prima facie a very inaccurate, inconsistent, and untrustworthy state of affairs when things of this kind must be done to reach a desired result and it indicates that defendant's experts, between themselves, cannot agree on how, at this late date, properly to adjust or arrange these surveys and maps which are relied upon by defendant so as to harmonize them with defendant's attempted location of the old river.

All of these surveys as above stated have been tied to survey 154, the field notes and calls of which are shown at page 3327 above indicated, and in No. 37 of defendant's Exhibit 15, marked 5522, following page 3222 of the printed record, and as far as material are as follows: "beginning at a stake set on the bank of the river, which bears N 38½

W 7 miles 328 varas (37871 ft.) from the upper corner of survey No. 1 made for M. Hughes from which an old lime kiln on the bank of the river bears N. 57 E. 940 varas (Major Emory's 2nd monument on the Mexican Boundary bears S. 20 E. and the 3rd bears S. 47 W.)."

It is evident that there are three sets of ties given by the surveyor in making his location upon the ground for the initial point of survey. Plaintiff's Exhibit 69, to be found at page 3150 of the printed record, shows the different sets of conditions to be met with in consequence of these ties as above mentioned. The first tie named is the one from the upper corner of the Moses Hughes survey No. 1, which is N. 38° 20 Min. W., 7 miles and 328 varas therefrom. This initial point is shown at the top of the circle placed on said Exhibit 69, which the notes say is a stake on the bank of the river for a southeast corner, but this tie from the Moses Hughes survey takes 154 far away from the river and places it out on the hills, which is manifestly a wrong location.

The second tie given is the one to the lime kiln, which is given in those notes as being "on the bank of the river" and bearing N. 57 E. 940 varas from the southeast corner of 154. This is the tie which has been adopted by both Campbell and Owen in placing 154 and the other surveys on their said maps, being defendant's Exhibits 62 and 65. This throws these surveys farther out into the valley and includes lands embraced within the area contended for by complainant and defendant. This tie is manifestly wrong because it is at the greatest variance from the first tie, as is apparent on plaintiff's Exhibit 69; also because monument No. 2 on the international boundary line between United States and Mexico is not visible, a peak of the Muleros Mountains intervening and obstructing the view, and further because as above stated the location of the lime kiln is not disputed and if the river bank was at the lime kiln it would be where complainant claims the old river to have been and it would then make a wide bend to the west to reach this location for S. E. corner of 154, which is in contradiction of the old witnesses in this case. And further,

by examination of complainant's Exhibit 69-A it may be understood how so locating the course of the Rio Grande against the old lime kiln would not in any manner conform to the position of the river line of these old Texas surveys in any portion, as claimed by defendant, and absolutely and completely discredits them from every angle of consideration in that connection, as taken by the Texas surveyors and shown on defendant's Exhibits 62 and 65. Briefly, it is impossible that the southeast corner of 154 and the lime kiln were both on the bank of the river, considering their relative positions as shown by the field notes of 154, or by reference to defendant's Exhibit 65.

At page 2728 defendant's expert Owen testifies that he had considered the possibility of the original surveyor having reversed his bearings to the monuments 2 and 3 on the international boundary and changing them to be S. 20° W. and S. 47° E., but as shown on complainant's Exhibit 69 at page 3150 of the record this would intersect at a point which is about 1000 ft. farther to the westward than the location given by the tie to the old lime kiln, "on the bank of the river" and is indicated to be untenable even by defendant's experts (p. 2728 of record).

An analysis of the condition at survey 154 is contained in the testimony of witness Post at page 2858, of Campbell at pages 2571-2, 3054-5-6-7, and of Owen at pages 2727-8 of the record.

The third tie mentioned in the original field notes, is the one to Emory's monuments 2 and 3 on the Mexican boundary line, and platting the intersection thereby called for will locate the point for SE corner and initial point of survey 154, as shown at the SE quadrant of circle on plaintiff's Exhibit 69, and this is further shown and indicated on plaintiff's Exhibit 69-A, and, as a matter of speculation, perhaps unjustifiable, it may be imagined that the second tie was really to Clark's Frontera in a northwest direction, instead of the tie given in the old field notes as northeast to the old lime kiln, and was afterwards changed by Mills to avoid conflict with survey No. 3. This would

place said survey 154 a short distance back from the river in the position mentioned by complainant's experts and would throw the location of the elder surveys 154, 155, 158 and 156 along the alignment of the river, as claimed by complainant and as testified to by the old witnesses, and place the old lime kiln on the bank of the river as called for in the old field notes of survey 154.

Surveys 156 and 157 were resurveyed in the year 1873, and the other surveys, 259, 260, 261, 262, 263 and 264 were made at dates after 1862 at which time the river made radical changes in its course, as testified by the old witnesses in this case, which testimony is uncontradicted.

Further, at page 2858 of the printed record, witness Post states that from the point for SE corner of survey 154, as located by the tie of 7 miles and 328 varas N. 38° 20 Min. W from the upper corner from Moses Hughes survey, being the position shown at the upper side of the circle on plaintiff's Exhibit 69, monument 2 on the international boundary line between the United States and Mexico, is visible.

It will be noted that the position for said SE and beginning corner of survey 154 as placed in the southeasterly quadrant of said circle, is on a direct line between said last mentioned position at the upper side of said circle and said monument 2 on the international boundary line, and it is therefore clear that monument 2 is visible from this point of intersection of the bearings on monuments 2 and 3, as the peak in Muleros Mountains is not in the line of vision to obscure said monument 2 from this point or on the line between these corners; and it being practically on the line of the old river is undoubtedly the more tenable of the several positions in which this beginning corner may be placed from the old ties that are given.

Complainant's Exhibit 72 shows locations of this block of surveys platted from the three sets of ties as indicated on complainant's Exhibit 69 (p. 2856 of record), and demonstrates the confusion that exists surrounding this section of the Texas surveys and how untrustworthy and unreliable

they are as a means of determining anything in connection with the former location of the river.

Complainant's Exhibit 69-A shows this block of surveys from the two ties given to Emory's monuments 2 and 3 on the international boundary, taken from the stake on the bank of the river, which are undoubtedly the more reliable of all these ties given because "Emory's monument 2 on the Mexican Boundary" is visible from that point, while it is not from any point to the west thereof: Because it is on or near the bank of the old river, and because this places surveys 154, 155 and 158 in the position where their southerly or river line is in position and location on the ground, as shown by the old witnesses and in their testimony in this cause.

That Emory's monument 2 on the Mexican boundary is not visible at Frontera or at any place west thereof is stated by defendant's witness Campbell at page 2495 of the printed record, by Owen at page 2728, by complainant's expert, Post, at page 2858; and as shown on defendant's Exhibits 65 and 68 because the easterly end or point of the Muleros Mountain extends to a position which obscures the line of vision from any point along the old river bank or in the valley west of where the bearings taken on Emory's monuments 2 and 3 on the Mexican boundary would intersect, as shown on plaintiff's Exhibits 69 and 69-A at page 3150 of the printed record.

On plaintiff's Exhibit 69-A there is shown the manner in which resurveys 156 and 157 and the later surveys joined thereto on the westerly side, each one to the other, extend across the valley to the westward. These resurveys and later surveys were all made after the violent change in the course of the Rio Grande in 1862 and 1864, as testified to by the old witnesses, and the introduction of these maps, surveys, and field notes was objected to by complainant on page 2427 of the printed record because made long after 1850 and therefore immaterial to the issue herein, and therefore cannot be of any weight as to where the river was in 1850.

These Texas surveys, field notes and plats thereof cannot be relied upon as indicating where the river was at any given time because of the *modus operandi* employed in the making of surveys in Texas. Defendant's chief expert, Campbell, at page 2537 states that survey 157 as patented was resurveyed some years after 1859 and that the annual change of the river really shifted the length of the sides of the surveys, and surveys 259, 260, 261 and 262, made in the year 1871, were tied to the river and hence were ever changing, and that surveys 259, 260, 261 and 262 in 1871, as shown on defendant's Exhibit 62, were located on the ground by the county surveyor, the east line of 259 being the west line of 157, and that so located the north end of 259 would not project into 173 (the Canutillo grant) as shown on Exhibit 62, and the southwest corner of 259 will be located, according to the surveyor's notes, at a point west and slightly north of the upper river corner of 157, and he then adds that such a location of 159 (which clearly should be 259) was never made because if so made the west line would cross the Rio Grande and run 3500 or 4000 feet out into the sand hills. In other words, a location of 259, according to the surveyor's notes, is impossible. This is a very fair illustration of the unreliable character of these Texas surveys.

Also at page 2538 Campbell states it is probable that survey 157 had changed much between the time of its location in 1853 and the time of the resurvey in 1873 because of the change in the channel of the river, and at page 2529 he states that these surveys were made conforming to the river at the time they were made, and at pages 2719, 2720 and 2721 that the points of the surveys follow the river as it receded, whence it follows that they cannot be of any weight as to where the river was in 1850.

At page 2538 the witness Campbell states that in building his map he fixed the position of survey 259 "to conform to the topography of the west side of the river, and placing it as near as possible to the position called for by the original record without violating common sense" and proceeded to run surveys 259 to 262 inclusive, up into survey 173,

which is the Canutillo grant, regardless of the field notes and the ties set out therein.

On pages 2620 and 21 Campbell states that subsequent surveys made may have been placed over the original surveys and surveys made subsequent to 1860 would not necessarily afford a definite indication as to where the river was between 1850 and 1860.

On page 2571 witness Campbell says that Mills' calls for survey 154 "will not fit."

On page 2572 Campbell states that the "river was running right up against the hills," in 1859 at the lime kiln and at the location of survey 154, and he, by imagination, it must be, says the river had changed between 1852 and 1859 by the width of survey 154; but if it had, of what value is 154 in fixing the place of the river in 1850?

At pages 2572 and 2814 Campbell states that the bearing and tie to Moses Hughes survey No. 1, would shift the beginning corner of survey 154 about four thousand feet to the east up out of the valley on the hills.

At page 3054 Campbell states, "there is a highly undesirable contradiction in the calls for the corner of that survey," 154, and that Emory's monument 2 on the Mexican boundary is not visible from either point taken by them (the Texas surveyors) as the beginning corner of survey 154, located anywhere in the valley above the canon.

At page 3055 Campbell states, "Well, if he (Anson Mills, the surveyor) was on the ground and made such a mistake I cannot understand how he could do it," it is such a palpable error.

At page 3056 Campbell states that the Texas surveyors assumed "that the surveys did shift with the river bank" and its frequent changes. Also he further states "if all those surveys are platted from the connection to the lime kiln just as the field notes require they would go out of the valley and up on the hills, and they would cross the river into New Mexico."

On page 3057 Campbell answers "yes" to a question as to whether those surveys from 154 up to 262 could have been made just as well in the office without a man going on the ground, if he saw fit to perpetrate that sort of work, and his attempt at explanation of this is not satisfactory.

At page 2719 Owen states the Texas surveyor took a point on the bank of the river as he found it in 1873, which was not the point of the survey in 1854, then called it a corner on the older survey; then upon the plat as shown on No. 23 of defendant's Exhibit 15, marked 5508, and on defendant's Exhibits 62 and 65, the surveys are joined so as to make this corner appear to be as it originally existed, although in fact on the ground the later point taken was far distant from the original point, to conform to the constantly changing course of the river so that the Texas surveyor made a mistake in saying what course and distance he was from the ties.

At page 2720 expert Owen states that the survey is supposed to follow the river and increases in length as the river recedes, and that there is much room for the river to recede at the point or place in the valley now under consideration as "the valley there, in that direction, is over a mile wide." On the same page, in speaking of survey 3 which is at or near survey 154, he says survey 3 was from the fixed astronomical point of Frontera, but as it "was considered as a river survey, with a river frontage, it followed the river in its receding," thus preferring a movable object to a fixed tie.

On page 2721, he says, "It was intended as a river survey with a river frontage" and if the river receded the lines of the land would grow and the survey would be changed on the principle of erosion and accretion, but this only shows the folly of relying on the later surveys as fixing the location of the river at the time of the earlier preceding surveys.

On page 2722 Owen mentions that "the conditions are so different for the two years when the two surveys were made, the river being in such different positions," and it

follows, from all his testimony that the common corner of two surveys as taken on the ground in the later survey may be far from where it was placed for the earlier survey, and in consequence thereof it is not the same point at all as would be indicated by the calls and the field notes and from the platting of the surveys.

On page 2723, because of this method in use in the making of the Texas surveys he says that survey 91 "when platted will show conflict." * * *"when we have discovered the correct position of Frontera and having also the information guiding us to the true location of the lime kiln."

On page 2725 Owen states the later survey 91 "would not be exactly where he (the surveyor) called for it" and would make survey 91 lap, "which lap would necessarily have to surrender itself from a point of superior being conflicted with." And, on the same page, he thinks the "trouble is based upon the lack of information of the surveyors at that time and the non-existence of the astronomical station." And he further states that the county surveyor made an effort to straighten out those old surveys, and take care of all conflicts, and that any correction made by the county surveyor "was adopted by him and would stand of record in his office and would be of record in the (state) land office at Austin under the head, possibly, of corrected surveys," although "he may not have made the proper location."

Thus, under this *modus operandi*, the Texas official surveys do not rely so much upon natural fixed objects or corners upon the ground as they do upon the opinion, interpretation, whim, adjustment, correction, or work of the then county surveyor, and when a different person becomes county surveyor he can and may make radical or considerable changes in the surveys and in their location on the ground, which is the "official survey" as long as he may so place it, or as long as he may be in office. This procedure may be duplicated under the administration of the next county surveyor. This shows the uncertainty, the unreliability, and the lack of dependence to

be placed on the records of surveys made under any such system. In any of the public land states, surveys that have been made by the United States Government have permanent corners placed upon the ground: If a stone is used to mark the corner, instead of using a rock in its natural, unmarked, pristine condition, as is done in Texas, as is shown at pages 2658, 2672 and 2688 of the printed record, the corner or stone on United States public surveys is identified by the proper markings, cut or chiseled upon its face, while the field notes contain entries or notations recording streams, roads, trails, ridges and other accidents of the terrain and of the topography through which the line passes, and each survey and the corners thereof are so tied to natural, immovable objects that it can be reestablished at some later date from the record kept in the field notes independently one corner of another.

If a survey extend to the margin of a river it should have permanent and lasting corners fixed upon the ground in the parts or portions of said survey most distant from the river and by notations made from the topography as well as bearings upon fixed objects to facilitate, as above mentioned, the reestablishment or resurvey of the corners and lines. Then if the river should move or change its course, that side alone of the survey and of the lands embraced therein would move to conform to the changes made in the stream, and would not take an entire block of surveys literally galloping, dancing, or moving about over the map as these Texas surveys have done and are doing, as shown by reference to testimony given by experts for defendant.

At page 2726 expert Owen for defendant states apparently as an excuse or as an explanation of this inaccurate, unintelligible, unreliable and untrustworthy condition of the Texas surveys, that at the time these surveys were made the "land was worth probably three cents an acre," and at page 2659, he says he considers the error of a surplus of 53 feet, which seems to have dropped into the Canutillo grant, "quite remarkable considering the time these surveys were made," thus indicating the uncertainty in which they are regarded by Texas surveyors.

At page 2740 Owen states that in holding or fixing the Texas surveys, upon the ground are four important points, which are "Monument Number one on the thirty-second parallel; the old monument (a pile of loose stones) on the east line of the Canutillo grant, established from the point in the slough which was the beginning point of Mills and Randolph in their surveys of the Canutillo grant; the third tie point or important point fixing all the surveys in the upper valley was the lime kiln, and the fourth was the Frontera astronomical point—I might add that a fifth exists, the stone (also unmarked) on the northwest corner of the Whittaker survey 134."

The attention of the Court is invited to the fact that Clark's monument No. 1 on the 32nd parallel has been obliterated and gone for years as far as any knowledge of its identity as being such corner is concerned, and that it is one of the major things of inquiry and dispute in this action now before the court, and which the Scott-Cockrell Commission failed to reestablish in its proper and true location upon the ground, and also that with respect to "the old monument on the east line of the Canutillo grant," survey 173, it is interesting to note what defendant's expert, Owen, himself, testifies on page 2665 of the printed record:

> "I came so near to the point that I found lying on the top of the sand ridge or sandy ground there a number of rocks that looked suspicious to me. We had a spade with us and we went down around this pile of rocks and dug up the monument. There is no other monument there and there is no question about it, that was the old monument established by Mills and Randolph. There is no question about it. I covered that monument up and put it back carefully and put the rocks around it just as I found it. A year or two afterwards when I went back there that monument was gone—I do not know what became of it, but I can swear that it was there."

This is particularly interesting because it is so like the manner in which complainant's expert Post discovered Clark's monument 1 and initial point at his station 1 in Anthony, as shown by his testimony on pages 1778-79-80 and

81 of the printed record; after Post had located the point for Clark's station No. 1 on the 32nd parallel, as he describes on page 1781, he "looked down and saw a stone sticking out of the sand and then began to dig into the sand and unearthed about fourteen stones within a radius of six feet, and was unable to find any other stones" anywhere in that locality, and found it was in fact Clark's initial point and monument 1. And Owen states that when he went back there a year or two thereafter "that monument was gone"; it was simply a pile of stones unmarked, unchiseled, and containing no inscriptions as the proper marking for a corner, but he repeatedly insists that "there was no question about it" being that corner, indicating this to be an unusually good corner on a survey in Texas.

But, alas, as so many other Texas corners have done, it passed away. It remained as such but a short while after its identification, and though constructed of better and more lasting material than it would have been had it been a "stake" as so often was used in making these surveys, within two years it departed hence "without day" and leaves us now to worry over its loss as also over the loss of multiplied dozens of other corners that should have been established and remain there at this time to mark all the corners of these surveys upon the ground.

It is to be noted also that the said "third tie point fixing all the surveys in the upper valley was the lime kiln," which, as testified to by Owen on page 2720 has disappeared within the last few years and is not now available from which to establish anything whatever in the nature of surveys, and that the "Fourth," the important point, was the Frontera astronomical point, which was discarded by the Texas surveyors themselves over a half century ago and all knowledge of its true location had been forgotten until again called into being in the present case in connection with the matters now under examination.

And it is to be further noted that "the Fifth point which exists—the stone at the northwest corner of the Whittaker survey 134" is one of these unmarked, unchiseled, un-

inscribed stones in its original and pristine virginity just as it rolled down from the mountains, and contains nothing whatever placed or cut thereon to make it legible or intelligible or to identify it as a corner, properly set to correctly mark a survey or a boundary of any kind and could not be known to anyone whomsoever unless he had "a personal acquaintance" with it, and there is grave suspicion that for some reason, inadvertently or otherwise, some wrong stone in another location (be it on another hill or in another vale, perhaps), might be identified and called as this described corner. Therefore, no sort of credence or weight can be given to any surveys or lines purporting so to be made, or field notes or maps alleged to have been written or constructed therefrom as these are not in reality surveys at all, in the common acceptation of the term, nor do they conform in any manner to the meaning of the word "survey" as they are not correctly represented on the ground by permanent corners or tied to the natural objects thereabouts, nor are they properly represented and delineated upon the maps, nor are they correctly described in the field notes purporting to have been made by the surveyors and officials certifying thereto.

Defendant's expert witness Owen states on page 2727 that the bearings from the beginning corner of survey 154 do not agree with the field notes and monument 2 on the Mexican boundary cannot be seen from the north side of Muleros Mountain.

Also on page 2728 he says "you may reverse those bearings as I have just said and they will not agree with the field notes. They will not fit the points either. And that is probably where the surveyor wrote his bearings in confused order or attempted to write them from memory a little while afterwards," which, to say the least, is and would be a very careless and unreliable manner in which to make surveys of boundaries of land upon which titles are to rest and values are to become fixed. Also he says on page 2732 "that there were four surveys there that were somewhat difficult of correct location," meaning surveys 154

to 265, as shown on defendant's Exhibit 65, and that surveys 263, 264 and 265 do not appear upon defendant's Exhibit 62, which was constructed by the chief expert witness, Campbell, because, as above stated, the experts for Texas themselves could not agree upon any manner whatever of adjusting these surveys.

On page 2734 Owen states the Texas surveyor in 1871 when he ran out these four surveys "began on the Rio Grande, as he stated he did, calling this beginning point the southwest corner of survey 157, possibly." Whether or not in reality it was so in fact, or whether or not it was anywhere within the region of the proper location for said SW corner of survey 157, "he evidently called that the southwest corner of survey 157, but as to whether this point was the southwest corner of survey 157, where survey No. 157 had been originally located is the question; or where he found this old river at this point and called it the southwest corner of survey No. 157. Which would be the southeast corner of survey No. 259." * * * "In other words, he ran the field notes of surveys 259, 260, 261 and 262 as you have them of record in El Paso County and in the Land Office (in Austin). And as we have them here in that record of patents."

It is inconceivable how anything could be more indefinite, unreliable, and uncertain than this: Initiating the survey from the Rio Grande at a time when it was changing its course, then arbitrarily calling the point so selected the SW corner of survey 157 without any regard whatever to whether or not it was in fact at or near the original and proper location for said SW corner of survey 157, and then proceeding to run out the field notes and place them on record, in El Paso and in the Land Office in Austin, Texas. Truly has it been said that "The deeds of men live after them—or the lack thereof."

As stated by the witness Owen on page 2734 the Texas surveys "are tied each one to the next one" and on page 2735 he admits that "it is possible for a man to make a paper survey—or a chimney corner survey."

On page 2736 of the printed record, the expert witness Owen says he located his surveys as he constructed defendant's Exhibit 65, coming up from the lime kiln; and if platted as defendant's chief expert Campbell did "would raise survey 259 up, which causes it to reach into the Canutillo grant and the same may be said of the others," which would cause them to lap over and obliterate surveys 263 and 264. This whole series of surveys depend on the lime kiln "beginning with the southeast corner of survey 154."

On page 2737 Owen states that we could "possibly by one or two trials be thoroughly well satisfied, and satisfied sufficiently as to the original survey"; that is to say, as there is nothing definite or permanent to tie these surveys to or at which to begin his work a surveyor must cut and try until he, through fatigue or otherwise, "be thoroughly well satisfied or satisfied sufficiently as to the original survey" after which illusion or delusion, whichever it may be, he begins or initials his running out of the field notes for record, and therefrom constructs what he terms a survey and so reports it to remain for the everlasting confusion of all later comers.

We believe the references to the testimony for defendant, as hereinbefore made, sufficiently show the haphazard and uncertain character of the Texas surveys under consideration so as to justify our assertion that they are of no weight as to the location of the river of 1850, but a better idea of the confusion as to these surveys may perhaps be had by a reading of that portion of the cross-examination of the defendant's expert, Owen, who was an intelligent and valuable witness, relating to these surveys, from page 2717 to page 2737 of the record, and we hope that the court will read so much of the testimony.

THIRD.

The Texas surveys near the 32nd parallel, beginning with 161, which is contiguous to that parallel, tend strongly to establish the correctness of complainant's location of the old river, etc.

This is graphically shown on complainant's Exhibits 65, following page 3148 of the record, 70 and 71 (marked 5321 and 5322) following page 3151 of the record, and 73, 74, 75, and 76 preceding page 3153 of the printed record, as also the index plat or sketch map on each of the old Texas surveys contained in defendant's Exhibit 15 beginning at page 3222 of the printed record, as also on defendant's Exhibits 62, 65 and 67 opposite page 3373 of the printed record, by comparison with the pleading map of complainant in this case, and the attention of the Court is specially invited to complainant's Exhibits 65 and 70, above mentioned, the former being offered in evidence and described, commencing at page 2847 of the record, and the latter at page 2860 of the printed record, and to the fact apparent therefrom that these surveys filled the whole space from the 32nd parallel down to the Canutillo grant survey. We invite attention to the detailed description given by complainant's expert Post from page 2865 to page 2868, from all of which it appears, without considering the inaccuracies and inconsistencies at this time, that the course of the Rio Grande, at the dates stated in the pretended field notes of these surveys, crossed the 32nd parallel at a point very close to the foothills along the eastern margin of the valley, that it then formed a bend to the west of something like a half mile, returning again to the eastern foothills at Tres Alamos, about a mile below the 32nd parallel, thence closely following the foothills for about one mile to near Vinton, when it makes another similar bend to the westward and returns again to the eastern foothills above the "Estero Redondo de los Sanguijuelas" (Spanish for Round Slough, or lake or swamp of the leeches) at the north end of the Canutillo grant survey, as patented by Texas, and that from there down throughout the entire section now under examination the old river occupied a position against the eastern foothills, as is indicated

by the marking "old river of 1826" which is in about the same position stated by the old witnesses in this case, and as shown on complainant's pleading map filed at the beginning of this suit: Further than this general sort of information, these old Texas surveys are so inaccurate, indefinite and erroneous as *prima facie* to discredit themselves, one with another, and so lacking in markings, ties to natural objects, or corners on the ground as to be utterly impossible of exact relocation in their original positions. And, as to general character, what was stated under the second heading applies with like force and effect to all of these old Texas surveys, and will be hereinafter more fully discussed.

There is not room enough between the 32nd parallel on the north and the hills on the south for the Texas surveys nor is the valley wide enough east and west to hold them. This is more particularly stated by complainant's expert Post, at pages 2879-80 of the printed record, where he states as follows:

> "A study of the Texas surveys, from the field notes of these surveys, reveals this condition: That from the field notes of said surveys there is, I believe in most every instance a connection with adjoining surveys; that is, the corner of one survey adjacent to another survey is connected by an apparent tie in the field notes of that survey. Then we have a condition that, wherever one survey may be located, and field notes of the adjoining surveys are used, that all of the adjoining surveys would assume a position according to connections shown in the field notes of the different surveys, moving about with whatever location is assumed for any particular survey; that is, as the first survey of a series of surveys were located to a particular object, then the balance of the surveys would be relatively located.
>
> A study of the various maps that have been presented shows that there is not sufficient distance between the thirty-second parallel on the north and the hills on the south for all of the different Texas surveys, according to the field notes of said surveys, without placing upon the foothills on the west side of the valley a river corresponding to the date of the surveys.

> The same condition exists with regard to the surveys east and west. You will readily see, by noticing the different locations of the Canutillo Grant, survey 173, that there is not sufficient room between the hills on the east side of the valley and the hills on the west side of the valley, to place said survey, without either placing the river of 1826 on the hills on the east side of the valley, or placing the river of 1860 on the hills on the west side of the valley as indicated in Mills' map of his survey, plaintiff's Exhibit 65."

There is no substantial contradiction of this evidence.

In order to throw some light upon the manner in which these Texas surveys were made, it is interesting to quote from the testimony of Campbell, on page 2590 of the record, as follows:

> "Q. 354. Have you noticed the fact, as it appears from the field notes, that all of those surveys, from No. 163 to No. 173, both inclusive, were made by Anson Mills in two days?
>
> A. Yes, on the face of it. That is, two days work, but I did not construe the record to mean that he did all of the field work in two days, because it would be a physical impossibility for him to make all of those surveys in two days."

Campbell then goes on to state his theory of the way Mills did his work, which, if correct would utterly discredit all work done by Mills because failing to record actual facts. And on page 2861 of the record the expert witness for complainant, Post, states, "If, as indicated in the field notes, these surveys from No. 161 to No. 173, inclusive, were made on August 8th, and 9th, 1860, the least I can say is that it was a remarkable feat." And, on page 2929, speaking of surveys 161 to 173 he further says, "Yes, according to the record they were made in two days" * * * and "ordinarily we put the date according to the field notes, which would be the date of the survey."

As shown on page 2900 of the record complainant's expert Post, states, "The purpose of its introduction, and

the purpose of platting this plaintiff's Exhibit No. 65, upon plaintiff's Exhibit No. 70, was to show the inaccuracies of the map and the contradictions upon the (Mills) map, and the inconsistency of the surveys as shown on the map with the ties given in the field notes"; and on page 2920 he states that complainant's "Exhibit No. 65, is assumed to be what it purports to be—a proper location by Mills—or possibly an after location of his different surveys." Also that "It was presented to show that it was an impossible location of his surveys." And, "We introduced it to show that it was unsustained in any way, inconsistent in every way, and did not correctly represent what was shown thereon, and did not conform to the ties thereon"; and further "It was introduced to show the inconsistency of his (Mills') survey * * * as shown on that map, and in connection with his surveys, generally."

That experts for defendant were much troubled and bothered as to how to arrange, fudge, fit and place the Texas surveys upon their maps Nos. 62, 65 and 67, is shown in a measure at pages 2599, 2600-1 of the record. And on page 2599 of the record defendant's chief expert Campbell, in speaking of his placing of these Texas surveys upon his map, Exhibit 62 of defendant, states:

> "Now, when Mills came along, ten years after that (i. e. after Howard had surveyed 34 and 35), I gather from his account of the location of survey No. 163, which he located by reference to survey No. 164, that he accepted the then intersection of the east bank of the Rio Grande with the south line of survey No. 34, as being the original corner, and the evidence is that in those ten years the east bank of the Rio Grande had shifted considerably to the east; and that instead of relocating the original corner, where it was placed in the first instance, he accepted a point on the south line of thirty-four, a considerable distance east of that, as the SW corner of survey 34. Then he would naturally plat survey No. 34 from that erroneous point, with its length running east, and would make it lap on those surveys."

The attention of the Court is directed to the fact that this is a very clear and correct statement of the manner in which these earlier Texas surveys were made: If the river was named as one line or boundary of a Texas survey and the length of the line given reaching to the river as recorded in the field notes, that remained as the *official* length, size and shape of the survey, though on the ground the line was supposed to follow the river, regardless of whether it cut into or receded from its original position when such survey was made. Then if, at a later date, another county surveyor came along to make the survey for patent of an adjoining tract he might or might not make some effort to locate the boundary of the older survey on the side contiguous to the lands of which he was making his survey and he would project such line to the river as he then found it, regardless of whether or not it was near to or far from where the river was located at the time of the earlier survey, and he would call the point so located the corner of the original survey, though it might vary ever so greatly—as much as more than a mile at times in latitude and departure from the exact location of the original point for such corner of the old survey, and thereupon he would initiate the new survey from the point so erroneously and incorrectly located. Then when working up his record and making his official plat he would work from the respective corners on the plat and calls, but utterly disregarding the fact that upon the ground, in the manner of taking such calls he had placed such corners on the river as it had changed far away from the original location thereof; and it is plainly manifest that no reliance whatever can be placed upon anything contained in any such alleged surveys or in any field notes, maps, or data pretended to have been taken therefrom, especially as to the earlier location of the river, which is what we are most concerned with.

In connection with the unreliability of these surveys and in order to present to the Court something about the direction of movement in northing or southing, in the jumping and galloping of these surveys as *fixed* by the Texas surveyors, attention is directed to the testimony of defendant's

chief expert, Campbell, at pages 2532-3-4-5 of the record, and particularly to his statement near the bottom of page 2533: "In arbitrarily fixing the position of the north line of survey No. 35 just one thousand three hundred forty-four varas south of the thirty-second parallel, Mr. Mills, apparently, from the evidence appearing upon this (Campbell's) Exhibit No. 62—as it is being explained—pulled the north line of survey 35 north, approximately one-quarter of a mile; and that in so doing * * * it is evident * * * why Mills would also pull the northwest corner of survey No. 35 from its original location a considerable distance eastward," and that some idea of Campbell's imagination of the movement easting and westing may be had, we turn to page 2537 of the record where he states, although referring to the set of surveys discussed under the "Second" point hereof, that "the shifting of the channel of the Rio Grande, where that survey and the adjacent surveys connected with the river, annually changed the length of the sides of those surveys, and that the original river corner of survey No. 157 had been washed away * * *. However, it is evident, from a knowledge of the width of the valley at that point, and of the position of the edge of the sand hills, forming the western margin of the valley, that such a location * * * was never made, for the reason that, if so made, the west line would cross the Rio Grande and run approximately thirty-five hundred or four thousand feet out into the sand hills."

The extremely interesting and illuminating thing about this is that we have defendant's chief expert witness, Campbell, apparently in all innocence and with evident frankness, stating that these earlier Texas surveys were arbitrarily "pulled" one-quarter of a mile north and in the other instance they were pushed "approximately thirty-five hundred or four thousand feet" west, up on the sand hills of New Mexico across the Rio Grande.

From the evidence, testimony and facts contained in the printed record, there is practically no limit to which this discussion of the Texas surveys could extend, as to their inaccuracy, unreliability and utterly worthless condition as a means of determining anything concerning the location of the

Rio Grande as it flowed in 1850 or as to anything material to the issue now under examination in this case. Therefore, we will leave this division; first, however, again directing the attention of the Court to the discussion of the Texas surveys in the second subdivision hereof.

FOURTH.

The Mills and Randolph surveys of the Canutillo Grant cannot be reconciled with their only proper foundation, the act of possession of that grant.

It is hardly necessary to call the attention of this Court to the nature and importance of the juridical act of delivery of possession of a Mexican grant, as that matter has been frequently considered. We will content ourselves by a mere reference to the case of

Van Reynegan v. Bolton, 95 U. S. 33, 34-5.

The papers showing the Canutillo grant are in complainant's Exhibit No. 60 beginning on page 3123 of the record. There is first a petition to the ayuntamiento of El Paso by Juan Maria Ponce de Leon for himself and twenty-nine others asking for one and a half leagues of land at the place called the Borrego Bend. The ayuntamiento on May 30, 1823, acted favorably on the petition and appointed four of its members to carry into effect the measurement of the land asked for, including Juan Maria Ponce de Leon as one of them, and on June 3 and 4, 1823, these persons performed the duty imposed upon them, as shown on pages 3125 to 3127 of the record. They proceeded to a measurement of the land granted with a cord (*cordel*) fifty varas in length, reciting that they observed the cardinal points because there was not at that place an expert mathematician to lay out the courses with accuracy (p. 3126). They say that "on the east course, upstream," evidently from "the point of the Canutillo toward the lower side," indicating that the place was already known by the name of Canutillo, the measurement reached the point of Artesa Grove and in front of the round slough of the Sanguijuela (which are two well known

places shown on Post's map between pp. 8 and 9 of record), where a cottonwood tree was marked. That they were in error as to being on an "east course up stream" is apparent from a consideration of the general course of the river which is from north to south and from what appears further along in the record of their proceedings as to the respective locations of the river and the hills, it being kept in mind that the hills are on the east and west sides of the valley and must have been there always.

The measurement was of 3750 varas, and they returned to the central point to make the second measurement which they say was on the west course of 3750 varas ending at the lower point of the Borrego Bend which is a well known locality on the west side of the river, opposite, or above, White's Ranch or Frontera and far south of Canutillo and referred to by some of the witnesses, which shows that their "west course" opposite to their mistaken east course, was really south, down the river. They then returned to their central point "with the object of making the third measurement on the south course," which obviously would be really on an east course, and they could not complete that measurement because they encountered the river, so high that it could not be crossed. This clearly shows their "south" course to be an east course, while their last course which they call "north," would really be west, going as it does to the hills before completing the 3750 varas. Thus reconstructed, the record of the measurement of the grant, places the river where complainant claims it to have been in 1850.

Now, Mills' survey, so far as preserved in our record, appears at Nos. 18 and 19 of defendant's Exhibit 15 which follows page 3222 of record and on a plat following page 3148 of the record, which is plaintiff's Exhibit 65, and a mere inspection of it discloses at a glance, that it does not in any way conform to the proceedings of the committee of the ayuntamiento the record of which is in effect the act of possession of the grant and is the only proper foundation for a survey thereof. At page 2751 of the record, it appears that the Mills survey was made in August, 1860,

and it is worthy of note that the map shows "old river of 1826" on about the course and about where complainant's witnesses have located the river of 1850 as shown on Post's map and at the place which would correspond with the record of the measurements which were made in 1823. There is no possible way of harmonizing Mills' map with those measurements of the Canutillo grant, or with the facts on the ground. Moreover, the Rio Grande valley is not wide enough at any point in that region to hold Mills' survey of this grant because as shown on complainant's Exhibits 73, 74, 75 and 76 opposite page 3153 of the printed record, if the course of the river of 1826 as shown thereon is platted to fit along the east side of the valley, then the river for the west side of survey No. 173 would be placed out upon the foothills along the west side of the valley; and if, in platting, the western course of the river is adapted to the hills along the west side of the valley, then the "river of 1826" is out on the hills to the east side of the valley; and further, if any of the ties are taken as called for in the notes of the purported surveys then varying other impossible positions result as will be apparent from complainant's Exhibits 73, 74, 75 and 76 opposite page 3153 of the printed record, and by witness Post on pages 2861 to 2864, and at pages 2876 to 2879, and on page 2880 Post states "that there is not sufficient room between the hills on the east side of the valley and the hills on the west side of the valley to place said survey," and there is no contradiction of this evidence.

The Randolph survey made in 1886 is shown on complainant's Exhibit 66 which follows page 3150 of the record, but it is shown on page 2752 of the record that it was merely an attempt to reproduce the survey made by Mills in 1860, and it was made many years after the great change in the course of the river in 1864, testified to by numerous witnesses, and Randolph may then have found a river on the west side of the valley, but a comparison of the two maps does not show much success in the attempt to reproduce the Mills survey as will appear on complainant's maps, Exhibits 73, 74, 75 and 76, opposite page 3153 of the record.

Mills' affidavit at page 3034 tells how he established his initial point on the lagoon with assistance of old Mexicans, and both maps locate Canutillo or the central point of el Canutillo at about the same place, and at a place which harmonizes with our interpretation of the record of the measurements made in 1823 under the direction of the ayuntamiento, and this indicates that, upon the change in the course of the Rio Grande, testified to by many old witnesses, from a location bordering the hills along the east side of the valley, to one near the western margin of the valley, the Texas surveyors erroneously and without due consideration embraced the opportunity to extend the political boundaries of Texas, and thereupon did attempt wrongfully to follow the then recent and temporary channel of the Rio Grande and proceeded to make grants, surveys and patents of the lands embraced in the surveys alleged to have been made by Anson Mills, surveyor, as shown on complainant's Exhibits 73, 74, 75 and 76 preceding page 3153 of the printed record.

In this connection it is of interest to note that defendant's intelligent expert, Owen, at pages 2692-3 of the record indicates the propriety of resorting to information from old Mexican witnesses in order to make a survey of the Canutillo grant, which is the method adopted by complainant in making its location and survey of the river in 1850.

The testimony of the witness, Steen, at page 2951 of the printed record, is also interesting as showing the reliability of this class of testimony. He tells of an old Mexican who testified in court that the corner of a grant was marked by a large cottonwood tree, but he, Steen, conversant with the grant, did not remember the tree. He and Mr. Will Tipton, of Santa Fe, the referee in the case, went with this witness on the ground where there was no trace of a tree, but the old man was so insistent as to the location of the tree, that they obtained shovels and, digging, found the stump of a tree which had been burned, about a foot below the surface.

FIFTH.

The so-called survey by Agustin Diaz, is not so authenticated as to be admissible in evidence, and, even if genuine, discredits itself.

Two attempts were made by defendant to put a copy of this survey in evidence, one by defendant's Exhibits 12 and 12a, and the other by defendant's Exhibit 71. At page 2363 of the record appears the offer of Exhibit 12, the exhibit itself, in Spanish, following on pages 2364 to 2376, and a translation thereof on pages 2380 to 2391. Objection was made for plaintiff at pages 2363-4, on the ground that the exhibit was defective and not properly certified. The certification is on page 2376, and a translation thereof on page 2391. The certificate is made by F. B. Puga, as the Mexican Commissioner on the International Boundary Commission between Mexico and the United States, and is to the effect that the exhibit including the plat is "a true copy of the field notes which exist in the original memoir of Don Agustin Diaz, which is in the archives of the Commission," but the plat, which will be found in Volume VI of the record, immediately preceding page 3193, shows on its face that it was not a part of the pretended work of Diaz, but was a Reconstruction of the map of the Rio Bravo between Paso Del Norte and Los Amoles from the data of the survey made in 1852 by Agustin Diaz, and that the Reconstruction was made in September, 1911, by the engineer, Baltasar F. Cue'. This clearly discredits Mr. Puga's certificate, and supports plaintiff's objection as to his attempt to authenticate the map which was not made by Diaz nor by his superior, Salazar. Nor does it appear in any way that Puga had authority to make such a certificate, nor that the original could not be had.

These objections were so clearly well founded that the defendant's counsel later introduced in evidence another copy of the Diaz record as defendant's Exhibit 71, which the record shows at pages 3091 and 3093 was furnished him by the Attorney General of New Mexico. On November 28, 1914, at page 2458 of the record, that Attorney General said

that before he got through he would offer in evidence "a properly certified copy of the record, or memoranda and field notes of Agustin Diaz, or so much thereof as covers this part of the river, from below El Paso and up the river from El Paso to Amoles." It appears from his statement at page 3090 of the record that at that time, in November, 1914, he believed that it was a properly certified copy, but that he no longer believed so, and therefore made the motion to strike it out, which appears at pages 3072-3 of the record, at the same time offering to counsel for defendant the copy previously referred to by him as "properly certified." In this connection we invite attention to the testimony of Thomas B. Catron beginning at page 3073 of the record as to his fruitless efforts to get information about this Diaz survey from Mr. Puga and in the government offices in the City of Mexico. We are firmly convinced that if the original Diaz record is in existence, and we could get it, it would reveal unmistakably the fictitious character of that record so far as the river between El Paso and Amoles is concerned, some evidences of which, however, are to be found in the alleged record itself as presented, as will be hereafter shown.

In the printed record this Exhibit 71 offered by defendant appears twice, the first one ending on page 2793, and the other ending on page 3387, but in neither place does the certificate appear, the sufficiency of which is questioned. The substance of that certificate is, however, stated by Mr. Catron on page 3088 as follows: "Is a copy which I certify to, Mexico, January 22nd, 1914."

We will have at hand for the inspection of the Court, at the argument of this case, the original from which Exhibit 71 was translated, which shows the certificate to be:

"Es copia que certifico, Mexico, Enero 22 de 1914,
Romulo Escobar."

Mr. Catron's translation is substantially correct. There also is attached a certificate of the Consul General of the United States that the signature of Romulo Escobar is gen-

uine, and that he was personally known to him to be the Sub-Secretary of the Department of Fomento of Mexico.

There is nothing to show in what capacity Escobar made his certificate nor does his certificate go further than to say that something is a copy, but of what is not stated, nor that it is correct. The Court will take notice of the fact that in all official acts and records, Mexican officers are, as a rule, very particular and exact, much more so than our officers generally are, and it is of some weight, and worthy of consideration, that Escobar merely certifies that this thing is a copy.

Perhaps some weight may be given to the hearsay statement reported by Mr. Catron on page 3087 of the record that the document in question, which Mr. Puga had in the Chamizal case, was obtained from the widow of Agustin Diaz a short time before the Chamizal arbitration, she having had it after her husband's death "if he had ever made it." Hearsay is sometimes of value, and this may account for the impossibility of getting any information from Mr. Puga (see pages 3076-7 of the record) or from the offices in the City of Mexico.

We will now pass to a consideration of the intrinsic merits, or demerits, of the alleged Diaz record.

If we should concede that the Diaz record is genuine, which may well be doubted as it is not so certified as to give it authenticity, and as we will show, discredits itself on its face, we find in it, as to the portion relating to the location of the river material to the present case, a strong indication that Diaz was following a river different from the one we are seeking to locate, or as the witness Steen states, you might infer from what he (Diaz) says that there were two rivers. Steen's testimony as to this appears on pages 2957-8 of the record. He calls attention to the fact that just before the giving of courses and distances between stations Rx and Rxm, Diaz said, "The following day (error for 'table') is the conclusion of the details of the Rio Bravo Nuevo, continuing from Rx at Frontera to Rxm at Los Amoles." "Nuevo" means new, and Rio Bravo is a

common name for the Rio Grande, so that the words mean "the new Rio Bravo" or New Rio Grande. This is also testified about by the expert witness Post at pages 2882, 2903 and 2941 of the printed record and is uncontroverted.

This language will be found at page 50 of defendant's Exhibit 71, a little before page 2793 of the record, and clearly shows that Diaz was meandering a "new" river, presumably created by the high water earlier in the season in April, May and June, which caused him much trouble below El Paso (pp. 2793, 3377, 3378, 3379, 3380 and 3387 of the record), and that it was not the ordinary river theretofore existing. Emory mentions that the rains were frequent and copious in the summer of 1852 (p. 2961 of record). It is to be noted that in the copy of the Diaz record first offered by defendant, which was so certified as to be clearly incompetent (pp. 3193, 3195, 2363-4 and 2433 of the record) this language about the new river is omitted as will appear by comparison of page 2366 with the corresponding place in the other copy offered later to which reference is above made.

This may or may not be significant. It must not be forgotten, however, that even as to the second copy offered (defendant's Exhibit 71), complainant contends as elsewhere shown in this brief, that it is inadmissible and cannot be given any weight (see pages 3072, 3077 and 3093-4 of the record).

That the field notes of the survey, appearing to have been made by Don Agustin Diaz and his brother, under the direction of Salazar, are uncertain, erroneous and difficult, if not impossible, of interpretation and reestablishment, is shown by the labor and trouble they occasioned the experts of both complainant and defendant and the different and various locations, or attempted locations, that were made in the field trying to fit them to natural objects and conditions on the ground. This is doubtless what defendant's expert Owen had in mind when, as shown in the printed record on page 2703, he said, "I do not regard that meander as of definite importance," and on page 2704 he said he did not

understand the Diaz field notes and so did not regard the traverse as of any importance, and yet this traverse which the intelligent Owen does not regard as of any importance, is what defendant principally relies on to defeat complainant.

This condition of the Diaz field notes as stated is undoubtedly increased by the methods apparently employed in making this alleged survey, as stated by defendant's expert witness, Campbell, on page 2521-2 of the printed record, where he says that the "record shows that he traversed it with a compass to give the courses, and he used a length of one meter on a level rod, measured by a micrometer on the instrument, for the purpose of determining the lengths of the courses in the traverse" * * * and "as a check on his rod and micrometer, he prepared a string (cordel) of a certain length and that he generally found the measurement with the string to be somewhat more accurate," and Campbell states that he mentions "this as probably largely explaining some of the differences between the triangulation and the traverse," which he says on page 2523 "do not agree" as reported in the alleged Diaz field notes.

The attention of the Court is invited to the fact that any "cordel" (cord) or "string" used in the progress of a survey along the edge of a river would be liable to become dry and then wet and dry again and in consequence thereof would be swelling and shrinking and therefore constantly changing length within itself; and that when used in passing through the trees, brush, weeds and other vegetation along and near to the river a "string" would be very difficult, if not impossible, to straighten out, as it would be liable to hang up and catch on the branches and foliage of the vegetation, which would bend, crook and shorten or change its length, thereby giving an incorrect, wrong, and erroneous measurement between points noted and, as a consequence, would make them impossible of reestablishment on the ground in their original locations from the courses and distances in the field notes so taken and recorded; and further, if a method, manifestly so erroneous and inaccurate

as this measuring with a "string" must of necessity be, was found to be "more accurate," as Diaz himself says it was, then measurements read from the compass by a micrometer on a rod one meter in length, placed at some considerable distance from such compass, regardless of whether or not the intervening line of sight was cleared of vegetation or not; it then follows that no reliance whatever can be placed upon any survey so made or alleged to have been made, and complainant asserts that no credence or weight should be given surveys alleged to have been thus made by Don Agustin Diaz under the direction of Don Jose Salazar Ilarregui.

There is a great deal of testimony by experts on both sides about the variation of the magnetic needle in the instruments used in making these alleged surveys and concerning the labors performed by them in their efforts to decipher, understand and relocate the alleged Diaz field notes, but the variance in the testimony clearly shows the unintelligible and uncertain condition in which this matter finally rests, and as shown on defendant's Exhibit 62 on which its chief expert, Campbell, places a solid line and a dotted line for varying positions of the Diaz triangulation system. And on page 2669 of the printed record, defendant's expert, Owen, says that "We find the three positions for all of these R's," meaning the reference points of the triangulation system on the river.

The expert Post states on page 2933 of the printed record "that the river line as run by Agustin Diaz cannot be located in accord with his triangulation system, there being a considerable amount of errors—in some instances probably balanced errors; and as I have explained heretofore in my testimony the manner in which it was taken would preclude any exact reproduction of the line, on account of the errors that exist." And on page 2935 the witness Post states, "I think it is an evident fact that any location made, with all of the errors that exist in the Diaz line, would be an arbitrary and assumed location," and on page 2936 he states, "I have not considered the river line of Mr. Diaz of suffi-

cient importance to determine whether there was an exact closing or not, because of the fact that under the conditions in which he took or made this line, you would not expect an exact closing."

Also on page 2907 the witness Post states that there have been as much as two or three changes since the question was introduced, as to the location of the Diaz river.

In speaking of the reference points along the Diaz river line defendant's expert witness Owen says, at page 2710 of the printed record, "These points, when run upon the ground might possibly be a different thing than from where they are run upon paper," and in answer to the question, "Then according to the Diaz notes, his Frontera would be two hundred and thirty-two feet nearer to Muleros than the other one" (the Frontera of Emory and Clark), the witness Owen answers:

"No, I do not think that—if you would accept that distance, and with Frontera as a fixed point, the distance as shown by Diaz would not reach the top of the mountains. It would throw you in a hole where you could not see anything. You could not see Juarez, or El Paso, and you could not see 'I,' and you could not see 'R' or 'H,' You could not see these points." And on page 2711, the witness Owen states that "We found 232 feet" error in Diaz computation of that length, and so he (Diaz) made the error in the calculation of that line, which he carried all the way up to his station Rxm" (at Los Amoles).

Steen's answer to question 376 on page 3020 is interesting. The question and answer are as follows:

"Mr. Steen, bearing in mind, as appears from this report, that Major Emory completed his location of Frontera in April, 1852, and that this work by Diaz, from Frontera up the river was done in August of the same year, is it credible that the skilled engineer, such as we now think Agustin Diaz must have been, if he had gone in person to Frontera, could have made such a location as he did, two

hundred fifty-three feet away from what Emory had located as Frontera?"

The answer was:

"I would not think that he would, and I should not consider it possible for him to have done so."

Defendant's chief expert witness, Campbell, on page 2808 of the printed record states that he found that the astronomical point called Frontera in the survey made by Diaz was 250 feet south of that which Clark established in 1859, and on page 2809 the witness Campbell says, "It is not impossible that Salazar may not have selected the point established by Major Emory." And on the same page he states, "Major Emory gives the difference in latitude between monument 1 on the boundary between Mexico and New Mexico and the astronomical point at Frontera. Mr. Owen carefully ran out the difference of that latitude beginning at monument 1, and that work locates Major Emory's astronomical point at the point which we determined in this case as the point occupied by Clark, as the astronomical point at Frontera. This introduces a discrepancy between the position of the astronomical point so determined, now from the record specified, and the position of Frontera as actually fixed on the ground by Salazar's field notes," as already stated of 250 feet, and as to these various locations of Frontera by Emory, Clark and Diaz, the witness Campbell states on page 2810, "We are all agreed as to that," meaning that the results of the labors by the experts for both complainant and defendant are essentially the same.

There is a difference between the point for Frontera by Clark and by Diaz of 253 feet, as stated by the expert witness, Post, on page 2906, and at page 2931. He states that "it is south one degree and twenty-four minutes east, two hundred and fifty-three feet from Clark's Frontera" to the Diaz or Salazar Frontera, and as shown on complainant's Exhibit 68, which is explained by the expert witness, Post, on pages 2850-1-2 of the record.

The fact that there is this discrepancy of 253 feet in the exact location of Frontera in the field notes of the alleged Diaz (or Salazar) survey, is extremely interesting and might lead to the conclusion that this alleged survey may have been in reality done at a time considerably more than seven or eight months, as the record of the said notes seems to show, after Major Emory had completed his work at Frontera, about April, 1852, or even long after Clark returned to Frontera in 1859, and that possibly this alleged survey was made long after the markings of the Frontera astronomical point by Emory and Clark had ceased to exist on the ground. This conclusion is further supported by the fact that in the field notes of the alleged survey by Agustin Diaz, as shown in defendant's Exhibits 12, 12-A and 71, as above mentioned, in the numbering of the stations there are used the letters "K" and "W" although there are no such letters in the Spanish alphabet which is in use in Mexico.

Another interesting thing about these so-called Diaz field notes is, as stated by complainant's expert, Post, on page 2948, that Diaz appears to have gone "so far as to read these angles to fractional parts of seconds" and defendant's chief expert, Campbell, on page 2521 of the record states that the record of the Diaz field notes shows that "this was a carefully executed system of triangulation, the triangles all being carefully balanced to fractions of seconds." Also on page 2933 of the record the witness Post was asked the following question:

"Mr. Post, have you thoroughly analyzed Diaz's angles and field notes at the point indicated as Muleros Frontera?" and he answers:

"Yes, and I will state that it is the best piece of closure, from the standpoint of office work, that I have seen anywhere; that it is practically perfection, if such a thing could happen in engineering. And I will say this also, in conjunction, that it is ahead of any instrument work that I have ever seen in original surveys, or that I have ever done myself; but that is due, in my mind, to a balancing and fixing up of any errors that might occur in the reading of the instrument in the office."

He is then asked:

"Do you mean that it is too good, Mr. Post?" and he answers:

"Yes, sir."

This is indeed very interesting from the fact that there is no instrument used by surveyors in the field that can be read to less than fractions of minutes, let alone fractional parts of seconds, and the further fact, as hereinbefore stated in discussing the defendant's Exhibits 12 and 12-A near the beginning of this "Fifth" point, the plat, which will be found in Volume VI of the record, immediately preceding page 3193, shows on its face that it was not a part of the pretended work of Diaz, but was a Reconstruction * * * and that the Reconstruction was made in September, 1911, by the engineer Baltasar F. Cue'. And, further, that at the time of said "Reconstruction" in 1911, which appears at page 2520 to have been a part of the record which Campbell examined, all markings on the ground of the astronomical point established at Frontera by Major Emory in April, 1852, and by John H. Clark in 1859, must have long before disappeared, which might account for a difference of 250 feet in the locations of the various Fronteras as above discussed, if we can imagine that Mr. Cue' went out on the ground when he made his "Reconstruction."

The attention of the Court is invited to the fact that according to the alleged field notes, the engineer Diaz, between August 1 and August 6. 1852, completed his triangulation, and by August 9 had finished his work up to Amoles, as is shown in defendant's Exhibits 12, 12-A and 71. An examination of the narrative by Diaz will be convincing that it would be practically impossible to do so much work in so short a time, especially in the month of August. This will be hereinafter more fully discussed.

On page 2542, of the printed record, defendant's chief expert witness, Campbell, states, in speaking of his work at Frontera, that from there down to "San Ygnacio where the

(Diaz) work began, is forty miles in a straight line down the valley," and on page 2592 he states from here to Los Amoles "would be between eighteen and nineteen miles," and on page 2779 the witness Campbell states that it is approximately 40 miles from El Paso to San Ygnacio and that Amoles is approximately 20 miles north of El Paso, or about half as far as from San Ygnacio to El Paso. The Diaz record shows that from San Ygnacio to El Paso he was engaged from March 27 to July 31, 1852, while he appears to have finished the 19 or 20 miles of triangulation and survey of the river to Amoles on August 9, 1852. In other words, the engineer Diaz is represented as having covered in nine days about half as much distance over the same kind of country as he had done in the preceding four months; which prima facie discredits the work and creates grave doubts as to the accuracy of work so done, if it ever was done.

Defendant's expert, Owen, on page 2657 of the printed record says "the point of primary importance * * * in order to fix all surveys, is the Frontera astronomical station"; and on page 2453 defendant's expert Campbell, in speaking of the work of relocating the old surveys and of their investigations stated as "perhaps most important of all a correct determination and exact location of the astronomical point at Frontera, as the basis for locating the position of the Rio Grande." The uncertainties and inaccuracies in the alleged surveys and maps purporting to have been made at early dates, particularly the old Texas surveys and the pretended Diaz (or Salazar) survey with respect to the location of Frontera, are graphically shown on complainant's Exhibit 68 opposite page 3151 of the printed record, the accuracy of which exhibit is undisputed. It is to be noted that in the various surveys where it is mentioned, it is the same astronomical point of "Frontera" called for in the field notes, there being actually only one Frontera. And it is further to be supposed that, if these alleged surveys were actually made on the ground at the dates upon which they purport to have been made, that they one and all did find and take the one and probably only point known

as Frontera, and that these various and sundry locations of the same point, viz., Frontera, merely indicate how impossible it is at this late date to discover the original locations and to reestablish them, if they were in fact ever run out on the ground, and are strong evidence that they were what Owen calls "chimney corner surveys" (p 2735), and never made on the ground.

While engaged upon the work of making the surveys and investigations material to the matters now under examination, the experts for complainant were first upon the ground and performed their labors in a careful, correct and workmanlike manner, and made no mistakes of any magnitude, which were checked up and discovered by experts for defendant, as is shown by the printed record in this case. That this is not true with respect to the experts of defendant, though they had the advantage of the previous labors of the experts for complainant, who had gone before and had indicated how solutions of the various engineering problems might be reached, is shown by defendant's expert, Owen, on page 2731 when he stated that "Station No. 35 is the one out of position" on defendant's Exhibit 67 and on page 2541 Campbell states "as shown on defendant's Exhibit 62 Diaz made an error of one hundred meters," "in the length of the line Muleros—Frontera."

Also on page 2576 the chief expert for defendant, Campbell, states that "on the face of Diaz's notes, there is an error of nearly one hundred meters in the length of the line Muleros—Frontera," which he placed on his map, defendant's Exhibit 62, as is stated by him on the previous page, while on page 2581 of the printed record, the witness Campbell states, "It appears that the original calculation, made jointly by Mr. Owen and myself. was not preserved; but in refiguring the triangle to determine the length of that line Muleros—Frontera, I find that Diaz's field notes are consistent within themselves; and that apparently Mr. Owen and I added a hundred meters in making that computation."

An extraordinary error by Campbell, attributable to over zeal for his employer, as he is ordinarily capable and intelligent, is to be found on page 2570, where he speaks of a survey in 1849 as having been made with reference to the 32nd parallel, which had not then been established on the ground, and was not of the least importance until Texas, in 1850, accepted it as a part of her boundary, as Campbell was on the same page forced in effect to admit. How that parallel became a part of the boundary is shown at page 6 of Vol. I of Part 1 of this brief for complainant.

That the experts for defendant, in their investigation of the alleged Agustin Diaz survey did not follow the line south of Frontera and into the Canon of the Rio Grande, the solid rocky sides of which have confined the river to an almost identical course throughout an immensely long period of time, is shown by the expert Campbell on page 2568, where he states that he did "nothing on the ground except that," he "went on the ground and determined the actual length of the line Muleros—Frontera" and on page 2703 of the printed record the expert Owen states, "I have run about four or five courses from Frontera south, as far as the Courchesne bridge to the south" and "no further. From there I platted in or printed in the courses on the map" from the Diaz field notes. The Courchesne bridge is some distance above the canon.

On the same page he testifies that he had not attempted to reestablish on the ground any of Diaz's triangulation points or stations, and that all that is shown on the maps which he prepared as to that triangulation, was by platting from the field notes without any field examination with one exception, which was his occupation of Muleros on the top of the Muleros Mountains.

However, to make a more complete investigation of the alleged survey purported to have been made by Agustin Diaz in 1852, and in order to make a most complete investigation of all matters discoverable which would throw any light whatever upon anything material to the issues in this case, the experts for complainant retraced the line as called

for in the alleged surveys and field notes of Agustin Diaz and have represented the condition thereof upon complainant's Exhibit 77, and as stated in the testimony of the expert witness, Post, on pages 2880-1-2 of the record.

Post says, "the line falls out upon the hills as indicated on the map, Exhibit 77, and that at points '2' and 'A' on the map the Diaz line of the west bank of the river falls so close to the hills on the east side of the valley" that there is not sufficient room for a river, and in the canon where the river is confined by solid rock where there can have been no appreciable change in centuries, at a point marked "B," which is just above the El Paso smelter and on the west side of the river, this line begins to ascend over the sides of a rocky hill, seventy to eighty feet above the Rio Grande, passing as much as three hundred feet back from where the river could run, or where there are any signs of a river ever having run, and that this line passes about two hundred and twenty-five feet east of the international boundary monument 1 on parallel 31° 47′ N, and below this the pretended Diaz river line passes a considerable distance back upon the foothills, where there is no appearance of a river having run in recent years, and that the alleged Diaz record "shows this river line to have been run with a needle, using a rod a meter long; in other words being a process of stadia measurement. On the face of it, a survey run in such a manner could not be made with accuracy. I do not believe for a moment that this survey was actually made out on the hills; but what I desire to call to your attention is, that the field notes do not represent the true location of the survey, assuming that said survey was made on the west bank of the river and in the valley." He goes on to state that a rod one meter (39.37 inches) long could be read at a distance of 300 or 400 feet "providing the atmospheric conditions are favorable. In this instance we have record here of distances varying from two hundred feet to more than one-half a mile. During the months of July and August, at which time this survey was made, it would be a difficult proposition to read distances above three hundred feet with any degree of accuracy; and a

rod one meter long at a distance of one-half mile would appear as a quivering object."

And continuing he further states, "If this survey through the canon is a sample of the surveys made by Diaz, where we *are* able to determine the lines which he actually ran (or the lines which his notes called for) * * * then we may know what to expect, and have a fair sample of what he did in the line above station Rx (at Frontera), on up to RXIII" (at Los Amoles). Above Frontera the country opens out into a broad valley where it is more difficult to detect such impossible locations of the river. "If the American Observatory by the Diaz triangulation is used; then this whole line as shown on this map, complainant's Exhibit 77, would fall 170 feet farther back on the hills on the west side of the valley."

Continuing further, Post states, "Mr. Steen and myself also ran this Diaz river line from station Rx to station RXIII by the field notes of said survey. At a point 'B' below the lower corner of survey 157, as shown on complainant's Exhibit 76, said line passes about three hundred feet on the edge of the (eastern) hills. We had no other place along this line by which we could check the Diaz line as set forth in his field notes, by any natural monuments or objects where it is open valley land, and it is not such a survey from which you could with accuracy locate the west bank of the river."

The correctness of these facts is borne out by the statements of defendant's expert witness, Owen, at pages 2708-9 of the record.

It must not be overlooked that there is in the record not one word to contradict the testimony of Post about the Diaz survey and we may be sure that it would have been contradicted, if possible, and therefore can have no doubt of its accuracy.

It may be noted that the expert Owen at first states (p. 2708 of record) that "at no place, no, sir, at no place" did the Diaz line lead him out of the valley on the hills

and then acknowledges (on same page of record) that the line as shown by the alleged Diaz field notes "would be probably pretty well on the bluff."

It thus appears how utterly unreliable are the alleged Diaz field notes and how impossible it would be to attempt to locate a river line from them: If the Agustin Diaz record was so faulty, inaccurate and erroneous in those portions where he appears to have consumed more time in doing his work, and where natural conditions show the inaccuracy and enable us to check his work, it is evident that they would be equally or more so in the portion covering the section of the Rio Grande material to the issue in this case above Frontera where he is alleged to have covered in nine days approximately half as much distance as he had covered in the preceding four months. That a correct survey could not have been made of about nineteen miles of river, valley, and hills, and the topography properly placed thereon, in 1852, with the means then at hand, may well be inferred from the statements of defendant's expert, Owen, at page 2629, where he says, "I was quite a while" on the meander line up the valley for the distance covered as alleged by Agustin Diaz, "and there must have been at least a hundred courses."

On page 2680 the expert Owen, being asked how long it took him to meander that old river bed from La Union up to the parallel, states that he "spent all of two days on that, and possibly a little more—some of the third day" with a regular crew of assistants, the distance being an insignificant part of what Diaz appears to have covered in nine days, as will appear by reference to complainant's pleading map. It is about one-fourth the distance which Diaz is reported to have covered, and would make Owen's progress on a meander line alone today, with a full crew and modern instruments and appliances, no faster than that of Agustin Diaz in 1852 before any clearing was done in the valley for cultivation, on the old river line and triangulation together with taking data for the construction of a map of the entire region, while Owen was merely meandering an old river bed. The incredible character of the Diaz

time is also indicated by Owen's testimony at page 2635, where he states that he was four days on that line; that is, on the Clark line from Frontera to the 32nd parallel, about 12 miles, engaged in flagging from point to point, not chaining or measuring, where he could sight from one hill or high point to the next, and that he had a wagon along on that work, the like of which Diaz cannot be presumed to have had in 1852. And on the following page he states that he "had not the time" to set a point where it ought to be, so it may be presumed that he was in as much of a hurry on this piece of work as Diaz appears by his record to have been on his in 1852; and further that on the Frontera meridian, while it is rough, as Owen himself states, there are no trees, brush, undergrowth or river to impede the progress of the work as Agustin Diaz relates in his alleged diary and field notes and as shown in the field notes of the pretended early Texas surveys, as would exist in the work Diaz is pretended to have done: Had the expert Owen cleared out and chained this twelve miles along the Frontera meridian he would have consumed twice as much time as there would be that much more labor to perform in a completed survey, and this was a straight line, instead of meanders along a river; for on page 2638 the expert Owen states that he was only "attempting to approximately locate points" upon that trip. Further, it is shown that Owen, in his retracing of Diaz's meanders of the river, was well assisted, as it is stated by him on page 2704 of the printed record that he "had, on portions of that work, at times, as many as six or eight men. I had a regular crew of four men. Then I had four assistants, when needed, in order to cut lines through the brush," while the Diaz record mentions that they had "five servants, whom we were to use as much for the operations as for the care of the camps which we might establish, that of the animals, etc." (p. 3376).

In speaking about the magnetic variation contained in the alleged Diaz field notes, on page 2937 of the record, the expert witness Post states, "I may say here, that if Agustin Diaz made the observations by which he could determine

the variations, that he either made a mistake in the determination, or there is something badly wrong."

In this connection, we must call attention to the statement of defendant's expert, Campbell, at page 2811. He says that the point actually occupied by Salazar, meaning Diaz, in 1852 as Frontera, is located upon the edge of the termination of the gravelly slope forming the extremity of the mesa land between Frontera and the Franklin Mountains, and the edge of the valley land: "all of the evidence in the record showing that the river flowed against the edge of this mesa formation, being on the extreme eastern side of the valley in 1852."

The theory of complainant's counsel as to this Diaz record, is, we will admit, largely conjectural in character, but is corroborated by some things which appear in the record; and it is that this Diaz record was not actually made in 1852 but was manufactured many years later for some ulterior purpose—possibly for use in connection with what is known as the Chamizal dispute as to the boundary near El Paso.

The Chamizal dispute is of such notoriety that the Court may well take judicial notice of the fact of its existence and that it concerns places near El Paso, which are covered by the alleged Diaz survey. This may well account for the fact that the manufactured record, as to places below El Paso, seems to be quite complete and perfect, while as to the region above El Paso, which was of no concern to those interested in the Chamizal matter, the work was done with haste and great inaccuracy.

If there is anything in this idea worthy of consideration, it would seem probable that the record was manufactured a great deal more than thirty years after 1852, and, if thus manufactured, it probably was in the interest of Mexican claimants, and this may account for the impossibility of our getting the original record, of which that which has been put in evidence purports to be a copy, as shown by the testimony of Mr. Catron, hereinbefore discussed.

SIXTH.

The east side of the valley is generally lower than the west side, in this section now under examination.

This is plainly shown on plaintiff's Exhibits 21 and 23, opposite page 3120, the first being a map from the U. S. Reclamation Service, Rio Grande Project in New Mexico, showing contours of the portion of the valley material to this case, and the second being profiles looking down the valley and clearly showing the east side of the valley at the left side of the cross-sections, to be much the lower. This is absolutely uncontroverted by defendant. The said contour map No. 21 shows the contours or lines of equal elevation to extend up the valley much farther along the east side than they do along the west side, and further indicates that at some places there is more slope across the valley toward the eastward than there is down the valley toward the southward, thus showing that there would be a natural tendency for the Rio Grande to follow the eastern foothills unless it is, from some unusual cause, thrown out toward the west; and it returns again upon the earliest opportunity to its position flowing against the foothills at the eastern margin of the valley.

The attention of the Court is invited to complainant's pleading map, between pages 8 and 9 of the record, as prepared by the expert witness, Post; which shows that the east side of the valley is a shorter course for the water to take than would be a channel along the west side of the valley, and this shorter course naturally would tend to draw the water off and to remove the silt more rapidly and keep it washed down more along the east side of the valley than along the west side, which is the condition found upon the ground today, as shown by Post at pages 1799 to 1809; also, as stated by complainant's expert, Steen, at page 2090 of the record, the course of the river as it now flows is practically the same as the course of the Rio Grande of 1850, as testified to and shown upon the ground by the old witnesses and shown upon the pleading map of complainant as prepared

by expert Post, with the exception of the bend toward the Piedras Paradas, which bend has been caused by the dykes built near White's Spur to protect the ground below them from the water of the river, which have had the effect of throwing the river to the west, as shown on complainant's Exhibit 22, which is an enlargement of a section of complainant's Exhibit 21, more clearly to show that portion of the valley and the said dykes so constructed as to turn and divert the channel of the Rio Grande from its natural course along the eastern margin of the valley; and, had it not been so diverted, that the Rio Grande would undoubtedly be now flowing along and following the course of its channel of 1850, as located by the old witnesses, is shown by the fact that said dykes have been overflowed and broken several times, as is stated by the expert witness, Turley, at page 2130 of the printed record.

Also, upon complainant's pleading map, prepared by the expert, Post, as also upon defendant's maps, Exhibits 65 and 67, is shown the "Loma de Arena" (Spanish for hill of sand). As this is a sand hill and is located far out in the valley from the foothills at the western margin of the valley, it is evident that it has been built up by the winds which blow principally from the west, as stated by the expert Turley at page 2171 of the record and as was developed in the testimony relating to the sand hill on the 32nd parallel crossed by Clark's survey running east from the Rio Grande.

It is a fact that there are places towards the middle of the valley and even at the river itself, as shown by Steen at pages 2040 et seq. and by Turley at page 2129, where the ground is higher than it is nearer the western hills, and this, including the Loma de Arena, can be accounted for by the fact that, the river being at the eastern margin of the valley, there was not moisture enough to keep the vegetation alive along the western side and left a barren zone extending out into the valley from the western foothills and that the sand drifting eastward from the arid hills along the west side of the valley, was caught in the margin of the

growing vegetation and formed an increase of elevation which would tend to hold the waters of the river to the west thereof when, during periods of flood, the waters covered the entire valley; also the growing and more plentiful vegetation would catch the trash and drift carried by the flood waters, as is testified to by the expert Turley at pages 2131-2-3 of the printed record, and would thereby cause the waters that were least impeded in flow to excavate and form a new channel which might account for the apparent anomaly of the Rio Grande forming for itself channels along and to the west and higher side of the valley.

It is a further notable fact that to the east of the valley of the Rio Grande, at from four to six miles from the river, are the Franklin Mountains which are rugged and rocky, as shown on defendant's Exhibits 65, 80, 81 and 82, and the runoff from the precipitation upon those mountains must be great in volume and torrential and carries down large amounts of detritus, rocks, boulders, gravel, sand and soil through the arroyos or water courses, as stated by the expert Turley at page 2193 of record, that debouch into the valley or Rio Grande from the east side; while on the west side of the valley there are relatively low and rolling sand hills, as shown on defendant's Exhibits 74, 75, 76, 80, 81 and 82, which originate back about two miles from the valley at the breaks on the edge of the mesa, as shown on defendant's Exhibits Nos. 72, 73, 74, 75, 76, 77, 78, 79, 80, 81 and 82 and extend for many miles north and south and in all the distance material to this case, along the western margin of the valley there are but two arroyos or water courses of any size or importance, the Arroyo Frijol and the Arroyo de los Defuntos, both of which are very small as compared to the arroyos that flow toward the valley from the Franklin Mountains, twice the distance away from the east side of this section of the valley. Therefore the heavier and coarser detritus and material is carried into the valley from the east side, which tends to obstruct the flow of the river and to cause it to cut out and wash the lighter and more easily moved silt, soil and material farther west; and if the east side of the valley were not the more natural

place for the course of the Rio Grande, being the shorter, as heretofore stated, it would throughout the immensely long periods of geological time have been compelled to form its valley and course more to the westward.

The attention of the Court is invited to the testimony of complainant's expert, Post, at pages 1798 to 1809, in which he describes and explains the maps that represent the section of the valley of the Rio Grande material to the issues in this case and clearly shows that the east side of the valley is as much as ten feet lower than the west side of the valley. This is further brought out in his cross-examination at pages 1850 to 1861.

This is further testified to by complainant's experts, Steen, at pages 2036, 2040-1-2, and Turley at page 2129 of the printed record.

At pages 721-2 of the printed record Col. Eugene Van Patten testifies as to there being no limestone west of the Rio Grande and that the residents of Los Amoles came to the east side of the valley to get their lime; and, that this condition extends all along the east side of the valley, may be presumed from the fact that complainant's pleading map shows the Calero (lime kiln) of Gualdarama a short distance below the 32nd parallel, and the old lime kiln not far above Frontera.

At page 2177 the expert, Turley, and at page 1854 the expert witness, Post, states that upon maps of tracts in El Paso County, Texas, he had seen delineated a river of "1826" and upon complainant's Exhibit 65, opposite page 3148 of the printed record is a reproduction of the Anson Mills map, which shows following along the hills on the east side of the valley what is designated and marked thereon as "old River of 1826."

It is a remarkable coincidence and also a confirmation of the testimony of the old witnesses that at the time Anson Mills is claimed to have come on the ground in 1860, if he actually came, which is doubtful, there still remained a channel and markings of the former course of the "old river"

along the eastern foothills following the line shown and testified to by the old witnesses and as shown on the pleading map made by the expert, Post, for complainant, as stated by him on pages 1869-70, and Post's inquiry from the old witnesses covered the time from prior to 1850 to the years 1862 and 1864, as stated by him at page 1879 of the printed record.

The attention of the Court is again directed to the field sketch on page 5 of Clark's report as printed in Senate Executive Document No. 70, and as shown on defendant's Exhibit 84, being a photographic copy of page 5 of Clark's report as shown at page 3066, a photographic enlargement of which is complainant's Exhibit 26 opposite page 3120 of the printed record; which shows the "Rio Grande River" flowing from a point more than one and a half miles above Frontera to a point considerably below Frontera along and immediately adjacent to the eastern foothills, which is on the identical location shown and identified by the old witnesses, as stated by the expert Post at page 1879, and by the expert Steen at pages 2099, 2100-12, of the record, and at page 2037 the expert witness Steen states that Mr. Randolph pointed out and identified the old river as being along the east side of the valley where he knew it when he was surveying there many years ago.

On pages 1801 to 1804 and at pages 1861 to 1869 of the record the expert Post, and the expert Turley on pages 2129, 30, 31, explain the dyke or border built above White's Spur, as shown on complainant's Exhibit 22 which was constructed to protect the land below it from the water of the river, and had the effect of diverting the Rio Grande from its natural course along the east side of the valley and turning it to the west side towards Piedras Paradas.

SEVENTH.

Defendant's Claims are greater than the total width of the valley.

Defendant's claims, as shown on its pleading map, are greater than the width of the valley, as stated, without contradiction by complainant's expert witness, Turley, at pages

2127 and 2133, of the printed record. The witness Turley states, page 2127, that said pleading map, defining the claims of Texas, is so brief and so devoid of information that it is practically impossible to arrive at any understanding of said map and claims, except by inference; and that the channel of the Rio Grande of 1850, which forms the boundary line between the states of New Mexico and Texas, and of necessity should be the most important thing to be shown on such a map, is not even named thereon; and leaves an understanding of the real claims of defendant very vague, uncertain and indeterminate.

As stated by the witness Turley on page 2128, by reproducing said pleading map of defendant on a true map of the section of the Rio Grande valley material to the issues in this case, in the manner as stated by him, using the railroad up the east side of the valley "as a basis, the line which we by presumption take to be the old river would flow out on the hills on the western side of the valley," and is manifestly incorrect, untenable and wrong as the Rio Grande has not been out upon those hills in recent geological times; and, as stated by the witness, Turley, on page 2129 this would throw the line on defendant's pleading map marked as "Claimed by Texas to be the true location of the boundary between Texas and New Mexico" to the west "about two thousand eight hundred feet" up on the hills on the western side of the valley of the Rio Grande "Back from the edge of the hills, a little over half a mile," and that these claims were interpreted as nearly as may be by complainant's experts from said vague and uncertain pleading map of defendant, is shown by the witness Turley on page 2128 by the fact that as near as complainant's experts could tell the location of Los Amoles was one of the best things on said map, and therefore coincided closely with the complainant's location of old settlement of Los Amoles.

On page 2128 and 2133 the witness Turley states that said pleading map of defendant, and the line shown thereon, which by inference intended to show the channel of the Rio

Grande of 1850 "is very much at variance with the testimony" of the "old witnesses, and all other means which we could find or discover."

While preparing the pleading map for complainant the expert Post, as stated by him at page 1848 of the printed record, placed thereon "approximate area in conflict between Texas and New Mexico 14,300 acres"; but at the time the said pleading map was prepared for complainant, the expert Post did not know what would be placed upon defendant's pleading map, and as stated by the witness Post that he does not consider himself "competent to say exactly what are the claims of Texas"; and states that the dotted "line there (on complainant's pleading map), as indicated, is platted from the notes of the various Texas surveys" and by referring to said pleading map of complainant it will be seen that said "dotted line" crosses the Rio Grande and extends far out onto the western foothills.

By an examination of this said dotted line and its courses as indicated on complainant's pleading map when compared with what is contained on the pleading map of defendant, it will be noted that the claims of Texas, as shown on defendant's pleading map do not agree in alignment or area with the line of the Texas surveys as patented, and it follows that the said "approximate area in conflict of 14,300 acres" as shown on complainant's pleading map, would be changed and vary greatly from this said area, as shown by claims made on said pleading map of defendant.

As testified to by the expert witness Post, he delineated the course and location of the Rio Grande of 1850 on complainant's pleading map, from the old witnesses and on page 2914 of the printed record Post states that when he made his investigations of the old river line he had seen no old maps, plats or field notes locating the old river above Frontera, nor did he know or believe that any such existed.

On page 2921 of the printed record, the witness Post states that he does not think that the Texas surveys of that territory are consistent and that "the general map made by the (Texas State) land office (in Austin) does not agree

with that (official) map that (was) made by El Paso County" and that "the position of the river line is shown differently on different maps"; but as the evidence shows the river line by the Texas surveys is thrown out on the foothills on the west side of the valley, and is shown on complainant's pleading map, and on complainant's Exhibits 70, 72, 73, 74, 75 and 76.

On page 2951 of the printed record the expert witness Steen states that he thinks the claims of complainant as based upon the location of the old river by the old witnesses and as shown on complainant's pleading map, are well founded. Also on page 2952 that an engineer could locate those points on the ground, and on page 2955 of the printed record he states that "at the time I located the river (line) that I had no knowledge whatever" of the purported older surveys.

By reference to what is hereinbefore set out under the "Second" point, it will be seen, beyond doubt, that the Texas surveys there discussed, must go out of the valley on the western hills if they are to find place anywhere, and under the "Fourth" point, it is made clear that the Canutillo grant survey cannot find room in the valley, but must go out on the hills on one side or the other, and all of these surveys are the foundation for Texas patents.

EIGHTH.

No record of any survey on the part of the river in controversy, except the discredited Diaz record, has been produced, as promised by defendant's counsel.

At page 2177 of the record, will be found the promise referred to. After counsel for Texas had referred to the general survey of the river from Dona Ana, the initial point, to the mouth of the river, as having stood as the official work, and accepted as such, and as having been relied on in all controversies between the United States and Mexico, with the exception of the part abandoned after the Gadsden treaty which was "that part of the work, though adopt-

ed, which fell north of the present boundary line of thirty-one degrees and forty-seven minutes between New Mexico and old Mexico," the attorney general of New Mexico asked a question and received an answer, which question and answer are as follows:

> "Attorney General Clancy: Before proceeding, Mr. Turley, I will ask you if you intend to produce any record of any official approval or adoption by our Government of that part of the survey, or of the alleged survey north of the parallel thirty-one degrees and forty-seven minutes, or do you merely expect the court to take judicial notice of the fact?
>
> "Mr. W. W. Turley: I might not show approval that would satisfy counsel on the other side, but I will show what we deem to be absolute official approval."

It must be kept in mind that that part of the "alleged survey" mentioned in the question above quoted, is the part which would cover the portion of the Rio Grande, the location of which is here in dispute, and such a survey officially approved or adopted by our government would go far toward settling this controversy.

There is no argument to be made under this point beyond the assertion that no record of any such survey, or of the approval or adoption thereof by our government, has been offered in evidence, nor is there any reason to suppose any can be found, as it sufficiently appears by the record that both complainant and defendant have made efforts, without success, to find anything, official or unofficial, beyond what is in the record, which would throw light on the matter in issue (see Post, p. 1841 and Turley, p. 3058).

The position of complainant is clearly stated at page 1821 of the record by its attorney general, that there is not in existence anything to show the meanders of the river from Piedra de Amolar up to Dona Ana, but this should be taken with the qualification stated as a part of this eighth point, of an exception of the discredited Diaz record.

We repeat that no record of any survey of the part of the river in dispute, made by or for our government or adopted or approved by our government, has been produced, and we confidently assert that no such record can be found. If it could be, we would have it in the record.

Complainant has been unable to find anything material beyond what is in the record, and at page 3058, counsel for Texas says that they have not been able to discover or produce any more records.

The record distinctly shows an effort by the complainant to obtain some additional information about surveys of the portion of the Rio Grande which is in dispute in this case.

In November, 1914, defendant offered in evidence a large number of documents and among others some extracts from the memoir of Lieutenant G. K. Warren, of the United States Topographical Engineers, in one of which, as appears on page 2307 of the printed record, it is stated that on arriving at El Paso in 1849, Col. Johnston and Lieutenant Bryan surveyed the valley of the Rio Grande to Dona Ana, and on page 2306 it appears that Bryan's name was F. T. Bryan. As the survey said to have been made would be of importance in the present case if it could be discovered, complainant proceeded to take the testimony of Francis T. Bryan at St. Louis, which testimony appears in the record at pages 2771 to 2777. This testimony was taken in May, 1915, when Bryan was 92 years old, but his testimony shows that his mental faculties and especially his memory were still in good condition. He declares that he did not, in conjunction with Col. Johnston make a survey from El Paso to Dona Ana, and that Johnston did not get to El Paso until some weeks after he (Bryan) left there and went to Dona Ana for provisions.

He testifies on page 2777 that when he went to Dona Ana from El Paso he had a pocket compass but that he made no surveys and indicates the use made of such a compass was roughly to calculate distances.

It appears by a letter from Major Emory, dated February 14, 1853, which begins at page 2250 of the record, that when he (Emory) took charge in November, 1851, he found two parties engaged in the survey of the river, one having begun two months earlier at the point 32 degrees 22 Min. on the river and had nearly reached Frontera. It also appears in the same letter that there was made a resurvey of the river to 32 degrees 22 Min. by Chas. Radziminski; and although it does not appear by the record, we believe it is not improper to say here that complainant has made every possible effort to discover any record of such a survey made by Radziminski, but without any success.

NINTH.

The testimony of the old men, upon whose statements the map with the bill of complaint was constructed, is the best evidence possible in degree as to the location of the river and must be given greater weight than any of the maps and surveys which have been put in evidence.

The direct oral testimony of living witnesses, given under oath and subjected to cross-examination, is clearly better evidence than any records of surveys or maps made by persons who cannot testify under oath, as such evidence must be considered of a hearsay character. This is the view taken by this Court, as will be apparent from the following quotation:

> "The evidence to be considered consists of the testimony of living witnesses, the physical facts and indications at and above the Island, and the maps and books produced by the complainant. In a controversy of this nature where State pride is more or less involved it is hardly to be expected that the witnesses would all agree in their testimony, and as this conflict does exist, it is necessary to consider the evidence somewhat in detail in order to justify the conclusions we have reached concerning it.
>
> There are eight witnesses called for the complainant, who testified confidently that the main channel of the Mississippi River was always east of Wolf Island, and one of them (Swon), an experienced river-

man who navigated the river from 1821 to 1851 in all stages of water, says there are no indications that the main channel was ever on the west side. Only three of them knew the river prior to 1820, and they were engaged in the business of flat-boating, which is hardly ever undertaken in a low stage of water.

There is nothing to show that any one of them ever made a personal examination of the channels and surrounding objects at this point and there is a remarkable absence of facts to sustain their opinions. It is also noticeable in connection with this evidence that none of the witnesses (Hunter may be an exception), ever lived in the vicinity of the Island or remained there any length of time, and that all the knowledge any of them acquired of the state of the river was obtained by passing up and down it at different times, either in flat-boats or steamboats. Notwithstanding they swear positively that the channel was always east of the Island, yet Watson says it changed for about three years, and Raneey testifies that on one occasion when the main channel was divided into three parts the deepest water for a short time in the fall of the year was found on the west side of the Island and steamboats passed on that side. But they did not prove a deficiency of water at any time in the Missouri Channel, or that any boat, from that or any other cause, was ever hindered in an attempt to run it. It is undoubtedly true that the Kentucky channel, when the river was full, for many years has afforded a safe passage for boats because at such time if the obstructions were not submerged they could be avoided; navigators would take it as it was five miles the shortest. And, passing the river only occasionally and without any knowledge of where the volume of water flowed when the river was low they would naturally conclude it was the main channel. It is equally true that now it is the main highway for the business of the river; but the point to be determined is, was it so as far back as 1763 or even 1820? For an investigation of such an inquiry positive certainty is not attainable, yet the evidence furnished by the defendant affords a reasonable solution of it. And, at any rate it greatly outweighs the evidence on the other side and in such a case the party in possession has the better right. The proof on behalf of the defendant consists of the testimony of twenty-seven witnesses. Many of them have been acquainted with

the river from an early period in this century and quite a number have spent their lives near the disputed territory, and therefore had better opportunities for observing the condition of the river at this point than the witnesses for complainant who only passed there occasionally. Nearly all of them are old men and there is no diversity of opinion between them concerning the location of the main channel of the Mississippi River at Wolf Island. All who testify on the subject—there are only a few who do not—agree that until a comparatively recent period it ran west of the Island and to fortify their opinions they described the state of the respective channels at different times and told what was done by themselves and others about the navigation of the river. They concur in saying that in early times it was difficult for flatboats, even in the highest stage of water, to get into the Kentucky chute, owing to the current running towards the Missouri side, and if they succeeded in doing it, the navigation was obstructed on account of the narrow and crooked condition of the stream, which was full of tow-heads, sand-bars, drift-wood and rack-heaps.

* * * * * * * *

But it is said the maps of early explorers of the river and the reports of travelers prove the channel always to have been east of the Island. The answer to this is that evidence of this character is merely hearsay, as to facts within the memory of witnesses, and if this consideration does not exclude all of the books and maps since 1800, it certainly renders them of little value in the determination of the question in dispute. If such evidence differs from that of living witnesses based on facts the latter is to be preferred. Can there be a doubt that it would be wrong in principle to dispossess a party of property on the mere statements—not sworn to—of travelers and explorers, when living witnesses testify under oath and subject to cross-examination and the physical facts of the case contradict them?"

Missouri v. Kentucky, 11 Wallace 395, 403, 405, 410.

Attention is called to the statement of the witness, Thomas B. Catron, who was eminent as a lawyer, at page 3084 of the record, that the Diaz record was "mere hear-

say," as being so near what this Court said as above quoted from the Missouri-Kentucky case.

It seems appropriate at this point, again to refer to the fact that no witness has been produced for defendant, in any way to contradict the old men called by complainant. The field was as open to defendant as to complainant, and there is no reason to suppose that complainant had exhausted the supply of old men who knew the location of the old river, but it can be conclusively assumed that defendant made every effort possible to find such witnesses, and failed because they do not exist.

TENTH.

Examination of defendant's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 61, all of which are maps made during the early days, of various sections of the southwestern portion of the United States, will clearly show that they are of no value in this case, as they are on such scales as to show nothing definite for an area of 12 or 15 miles in length, and are not based upon any surveys the records of which have been produced.

There is nothing about them showing surveys of the course and location of the section of the Rio Grande material to the issue in this case, and are apparently relied upon by attorneys for defendant to take the place of testimony of witnesses but in reality are camouflage, perhaps intended to confuse the Court and to cloud the issues now under examination.

On pages 2355 to 2362, inclusive, of the printed record, attorneys for defendant introduced maps which were marked as defendant's Exhibits Nos. 1 to 11 inclusive, and as each map was offered in evidence, it was objected to by complainant and in general said objections were that said maps were irrelevant and immaterial to any issue in this case and because it is not shown what if any surveys there were, or notes of surveys, upon which the maps were based, and the scales of the maps are so small as to make them practically of no value. And, on page 2357, map No. 2, is further objected to because Major Emory was not charged with the

duty of making any surveys above and north of 31° 47 Min. N. latitude, which is below and south of the area under examination in this case and it is not shown that he made any such survey.

On page 2359 defendant's Exhibit No. 5 is further objected to because it shows nothing about the portions of the boundary line now in dispute in this case.

On page 2360 defendant's Exhibit No. 6 is further objected to because it purports merely to "show the initial point under the treaty of December 30, 1853," which is on the 31° 47 Min. parallel of latitude and is some distance below and southerly of the section now under examination in this case.

Hence it is that these old maps do not correctly represent the topography placed thereon. At pages 2829 of the record John H. Clark dated September 30, 1861, beginning on page 296 of the printed report of his work in Senate Executive Document No. 70, speaks of "the Meridian of Frontera being crossed by many broken spurs of the Franklin Mountains" and defendant's expert witness Owen, at pages 2638 and 2643 speaks of the roughness of the country covered by the Frontera meridian, and yet defendant's Exhibit No. 6, which is on the largest scale of them all, and which in its legend and on its face purports only to be "showing the Initial Point, under the Treaty of December 30, 1853," shows with great clearness that this same stretch traversed by the Frontera meridian, together with practically all the area to the northward of Frontera, is open and smooth country and not even containing a water course to lead off the flood waters running down from the Franklin Mountains to the east, which are erroneously called thereon the "Organ Mountains"; while in fact the Organ Mountains are located about twenty miles north of anything shown upon this map, indicating clearly that the only matters intended to be shown thereon were that there were mountains to the northeast of the said "Initial Point" and that the Rio Grande approached said "Initial Point" from somewhere to the northward of 31° 47 Min. of north latitude,

and therefore cannot be relied upon to show the correct location of anything as depicted thereon which might be considered material in this case, or of the topography in the section now under examination.

These statements apply with equal force and meaning to these other maps on such small scales, which, as stated by the expert witness, Post, at pages 1890-1, that "it would be foolish" to look for a corner at a point located by scaling the distance from a map on so small a scale as Clark's map No. 1 which is approximately 13,100 feet, or a little less than 2½ miles, to the inch—much larger than any of the maps now considered except defendant's Exhibit 6.

Defendant's Exhibit 1 is a mere index map and has no scale marked on it, but judging from the parallels and meridians thereon, its scale would be about 10 miles to the inch.

Defendant's Exhibits 2, 3, 4 and 5 are each on a scale of 1 to 600,000, or about 10 miles to the inch.

Defendant's Exhibit 6 is on a scale of 1 to 60,000.

Defendant's Exhibit 7 is on a scale of 1 to 6,000,000.

Defendant's Exhibit 8 is on a scale of 1 to 3,000.000.

Defendant's Exhibit 9 is on a scale of 1 to 760,320.

Defendant's Exhibit 10 is on a scale of 1 to 954,400.

Defendant's Exhibit 11 is on a scale of about 1 to 1,500,000.

It must be apparent that such maps can be of no assistance in determining the course of a river traversing an area of 12 or 15 miles in length, or of fixing the topography of such an area.

It is difficult to understand why these maps are allowed to encumber the record, unless it was for the purpose hereinbefore indicated.

SUMMARY.

In closing this presentation of the case of complainant, a brief summary of our position and contentions may be of some assistance.

We reiterate that the issue in this case is as to the location in 1850 of the Rio Grande between the 32nd parallel of north latitude and the parallel of 31 deg. 47 Min., the latter being the boundary line between the United States and Mexico under the Gadsden treaty. The Rio Grande between said parallels is a part of the boundary between New Mexico and Texas, as fixed by the proposition of Congress in the act of September 9, 1850, as shown on page 6 of Part One of complainant's brief, which proposition was accepted by Texas in November, 1850, as appears at page 8 of the record.

Complainant's contention is that the river in 1850, between the parallels aforesaid, ran near the hills on the east side of the valley as shown by the survey made by the surveyor and engineer, Charles L. Post, and on the map made by him, a facsimile of which, reduced in size, was filed with the bill of complaint and appears after page 8 of the record. The record shows that this survey and map were based upon information obtained by Post from old men, many of whom, whose names and ages are set out at page 805 of Part One of our brief, have appeared and testified as witnesses for complainant. As to their testimony, reference is made to said Part One, and at this point it is sufficient to say that it quite fully supports the correctness of Post's survey, especially when taken in connection with the testimony of the engineers, Post, Steen and Turley, as both witnesses and engineers declare that the old men went on the ground and showed the location of the old river to the engineers.

Post's survey is corroborated by the record of the work of John H. Clark in 1859, on the 32nd parallel (of which Post had no knowledge until after his survey was made), the line then established by Clark having been adopted by Congress in its resolution of February 16, 1911, which ap-

pears at pages 10 to 12 of the record, as the boundary between New Mexico and Texas; by Clark's sketch of the Rio Grande near Frontera; by the general configuration of the country, the east side of the valley being lower than the west side, and the course of a river along the east side being shorter than would be the course of such a river as is claimed in the answer of defendant (see map after page 20 of record), which is far to the west side of the valley, and by a proper and careful examination of various old Texas surveys which have been put in evidence; and the present river shows how it has come back to the location claimed by complainant except where prevented by dykes near "White's Spur."

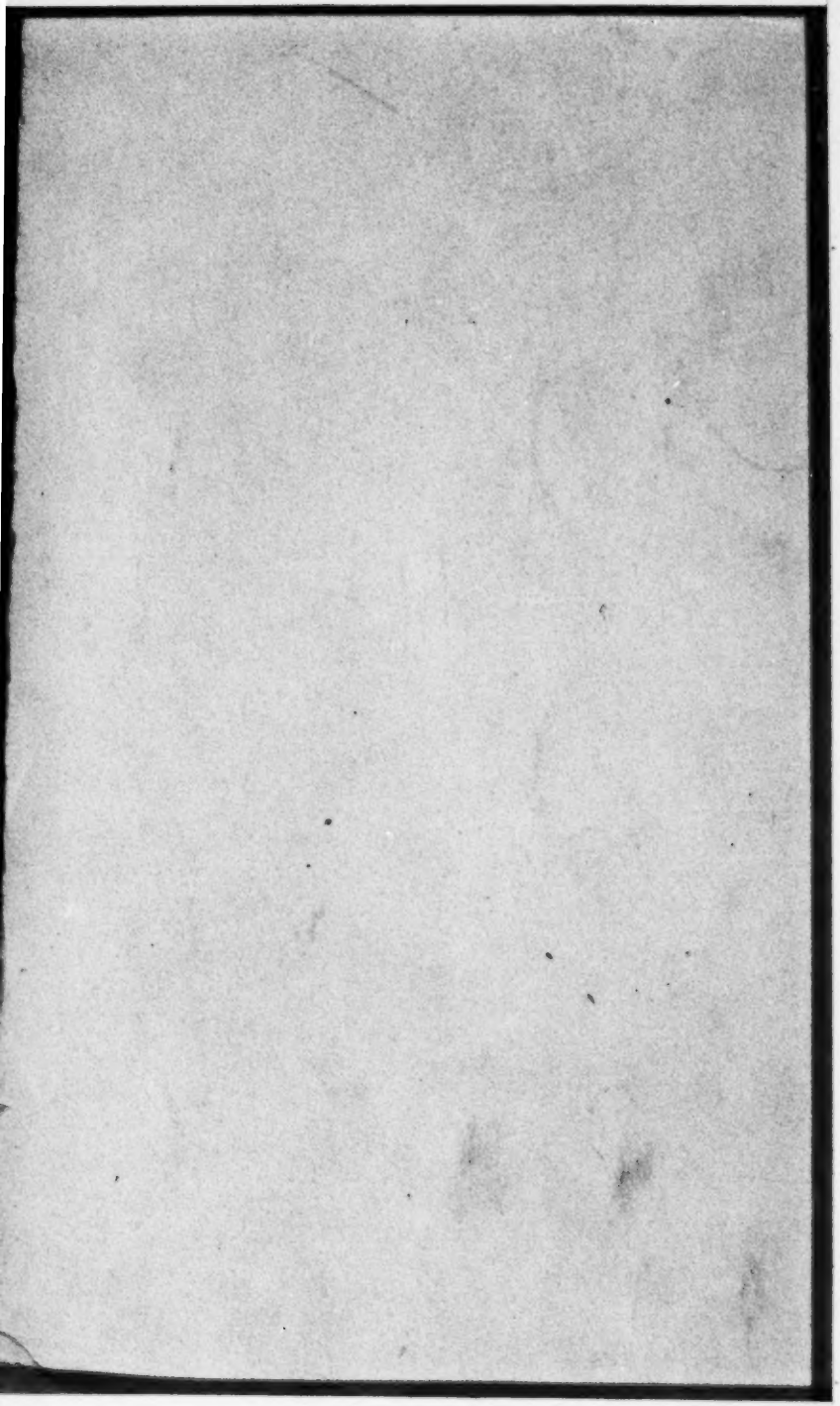
The total width of the valley is insufficient to contain all the ground covered by defendant's claims, which is shown under the Seventh subdivision hereof.

Defendant relies principally upon an alleged survey by Agustin Diaz and his brother, appearing by a copy put in evidence, to have been made in 1852, under the direction of Jose Salazar, who was the surveyor of the Mexican part of the Commission created under the treaty of Guadalupe Hidalgo. This so-called survey does locate the river approximately where defendant claims it to have been, but complainant insists that it is of no weight because it was never approved or adopted by either Mexico or the United States; because the copy presented is not so authenticated as to make it admissible in evidence; because it is no more than mere hearsay, without any foundation; and because it so discredits itself on its face as to justify the belief that it may be fictitious, all of which is fully hereinbefore set out under the Fifth subdivision hereof.

Defendant appears also to rely on a variety of old Texas surveys of tracts of land which seem to fall in the area in dispute, while complainant contends that they are entitled to but little or no weight as shown under the Second, Third and Fourth subdivisions hereof, and do to a great extent support complainant's location of the old river of 1850.

Complainant contends, as shown under the Ninth [illegible] division hereof, that the evidence of witnesses who [illegible] from personal knowledge and memory of the facts, is [illegible] rior to any other evidence attainable.

Complainant also contends that a large part of [illegible] record made by defendant is of no value, as is shown under the Tenth subdivision hereof.

It is submitted that the great preponderance of evidence is in favor of complainant's position, and that complainant is entitled to a decree as prayed in its bill.

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